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Filed
Nov. 4. 1879

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~264.~~ 4 4

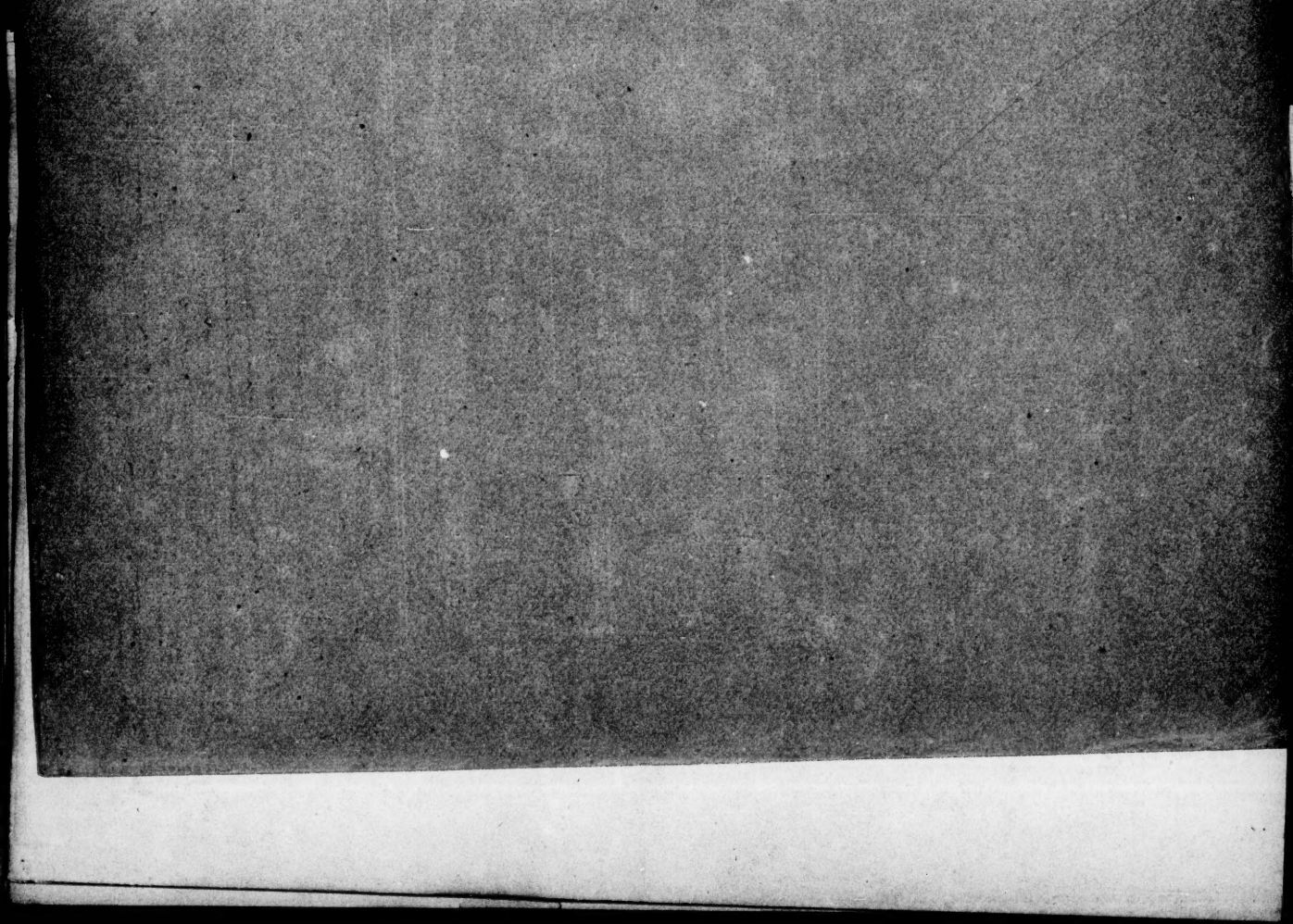
THE GLENDALE ELASTIC FABRIC COMPANY, APPELLANT,

vs.

WILLIAM SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 16, 1876.



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15. Certified copy of divisions A and C of reissued letters patent to William Smith	1499	840
Respondent's Exhibit (A) Certified copy of file and contents in the matter of withdrawn application of Julius Hotchkiss, filed August 23, 1844	1500	841

1–7 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-five, before the honorable George F. Shepley, circuit judge.

WILLIAM SMITH, COMPLAINANT,
v.
GLENDALE ELASTIC FABRICS COMPANY, DEFENDANTS. } In equity.

8 The bill of complaint in this cause was filed in the clerk's office on the nineteenth day of November, A. D. 1868, and was duly entered at the October term of this court, A. D. 1868, and is in the words and figures following, namely:

9 *Bill of complaint.—Filed Nov.* 19, 1868.

To the honorable the justices of the circuit court of the United States for the district of Massachusetts.

William Smith, of the city and State of New York, and a citizen of the said State of New York, brings this his bill of complaint against the Glendale Elastic Fabrics Company, a corporation duly established by the laws of Massachusetts, and having its usual place of business at Easthampton, in the said district of Massachusetts.

And thereupon your orator complains and says:

That your orator is the original and first inventor of certain new and useful improvements in corded and elastic fabrics, and in machinery and process for weaving corded and elastic fabrics, which improvements were never known or used before his invention thereof, and which were not at the time of his application for a patent, as hereafter mentioned, in public use or on sale with his consent or allowance; and that your orator being so, as aforesaid, the inventor thereof, before the fifth day of April, A. D. 1853, made application according to law for letters patent of the United States to be granted him for the said invention; upon which application, due proceedings being had in all respects, said letters patent were on the said fifth day of April, A. D. 1853, and bearing date that day, granted and issued to your orator, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents,
10 and under the seal of the Patent Office, whereby there were granted to your orator, his heirs, administrators, or assigns, for a term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof was given in the words of the patentee in the schedule annexed to the said letters patent, and forming part thereof, all of which in and by a certified copy of said original letters patent, in court to be produced and shown your honors, will more fully appear.

And your orator further shows that before the period for which said letters patent were granted had expired, being desirous of obtaining an extension of said letters patent for a further term of seven years, he made application therefor in due form of law to the Commissioner of

Patents, whereupon, due proceedings being had in all respects, the Commissioner of Patents did, according to law, renew and extend the said letters patent by making a certificate of said extension thereon for the term of seven years from and after the expiration of the said term of fourteen years for which said letters patent were originally granted, as by a certified copy of said certificate, in court to be produced and shown your honors, will more fully appear.

That afterwards your orator surrendered to the Commissioner of Patents, in due form of law, the said letters patent extended as aforesaid, and such proceedings were had that the Commissioner of Patents did, on the 18th day of June, A. D. 1867, reissue to your orator for the same invention letters patent of the United States bearing date the said 18th day of June, A. D. 1867, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and under the seal of the Patent Office, whereby there were granted to your orator, his heirs, administrators, and assigns, for the term of twenty-one years from the fifth day of April, A. D. 1853, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof was annexed to the said reissued letters patent, as by reference to a certified copy thereof, in court to be produced and shown your honors, will more fully and at large appear.

That afterwards your orator surrendered to the Commissioner of Patents, in due form of law, said last-mentioned reissued letters patent, and such proceedings were had that the Commissioner of Patents did,
11 on the fourteenth day of January, A. D. 1868, and bearing date that day, reissue to your orator two several letters patent of the United States, the one entitled a new and useful "Improvement in Weaving," and signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and under the seal of the Patent Office, and numbered 2843, whereby there were granted to your orator, his heirs, executors, and assigns, for the term of twenty-one years from the fifth day of April, A. D. 1853, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof was annexed to the said reissued patent numbered 2843 as aforesaid, as by reference to the same or to a certified copy thereof, in court to be produced and shown your honors, will more fully and at large appear; and the other entitled a new and useful "Improvement in Weaving," and signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and under the seal of the Patent Office, and numbered 2844, whereby there were granted to your orator, his heirs, executors, and assigns, for the term of twenty-one years from the fifth day of April, A. D. 1853, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof was annexed to the said reissued patent numbered 2844 as aforesaid, as by reference to the same, or a certified copy thereof, in court to be produced and shown your honors, will more fully and at large appear.

That your orator has always, since the date of the reissued patents numbered 2843 and 2844, been in exclusive possession of the inventions respectively patented therein, with the exception of the acts of the defendant company and its confederates, and has put the same into practical use in the said United States and used the same during all of said period, and but for the wrongful acts of the defendant company and others confederating with said company would have made large gains and profits from such use, and that the said patented inventions have

been of great benefit to the public and are of great value to your orator.

Yet the defendant company, well knowing the premises and the rights secured to your orators as aforesaid, but continuing to injure your orator, and to deprive him of the profits, benefits, and advantages

12 which might and otherwise would accrue unto your orator from the inventions patented to him in the said reissued letters patent numbered 2843, and in the said reissued letters patent numbered 2844, did, on or about the second day of March, A. D. 1868, at Easthampton, in the said district of Massachusetts, as your orator is informed and believes, and without the license or consent of your orator and in violation of his rights, and in infringement of the said reissued letters patent numbered 2843 and the said reissued letters patent numbered 2844, unlawfully and wrongfully make and use the inventions patented to your orator in the two last-mentioned reissued patents; and your orator is informed and believes, and therefore avers, that the said defendant company has continued to make and use until the present time the said inventions patented to your orator in the two last-mentioned reissued letters patent, whereby your orator has been greatly injured and deprived of great profits, which he might and otherwise would have derived and acquired from the said inventions, and that the defendant company is threatening to continue to use the said inventions in violation of the rights secured to your orator by the two last-mentioned reissued patents. That your orator has caused notice to be given to the defendant company of said infringements and requested them to desist and refrain therefrom; but the defendant company has disregarded such notice and refused to desist from said infringements, and still continues to use the said patented inventions as aforesaid in disregard of your orator's rights under the two several reissued patents last mentioned.

And forasmuch as your orator is utterly remediless at the common law and can have no relief except in this court:

To the end therefore that the said defendant company may, if it can, show why your orator should not have the relief hereby prayed, and may, according to its best and utmost knowledge, remembrance, information, and belief (the defendant's oath being hereby specially waived), full, true, direct, and perfect answers make in the premises, and to all the several matters herein stated and charged, as fully and particularly as if interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by the said defendant company acquired and the damages suffered by your orator from the aforesaid unlawful acts:

May it please your honors to grant unto your orator the writ of

13 injunction issuing out of and under seal of this honorable court in due form of law, commanding, enjoining, and restraining the said defendant company and its officers, servants, agents, attorneys, and workmen, and each and every of them, from directly or indirectly making, using, or vending to be used, or in any manner counterfeiting or imitating the said inventions, or any part of either.

And to grant to your orator such other and further relief as shall be agreeable to equity and as to this honorable court shall seem fit.

And, also, may it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, commanding him, by a certain day and under a certain penalty, to be and appear in this honorable court,

then and there to answer the premises, and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray.

WILLIAM SMITH.

CHAUNCEY SMITH,
Of Counsel for Complainant.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this seventeenth day of November, 1868, before me personally appeared William Smith, the above-named complainant, who, being by me duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

WILLIAM F. McNAMARA,
Notary Public, City and County and State of New York.

14 On the first day of February, A. D. 1869, the following answer was filed, namely:

Answer.—Filed Feb. 1, 1869.

The answer of the Glendale Elastic Fabrics Co., defendants to the bill of complaint of William Smith, complainant.

These defendants, saving and reserving to themselves now and at all times hereafter all manner of benefit and advantage of exception that can or may be taken or had to the many errors, uncertainties, and insufficiencies in said bill of complaint contained, for answer thereto, or to so much thereof as they are advised it is material or necessary for them to make answer unto, answering, admit that they, the Glendale Elastic Fabrics Co., are a corporation duly established by the laws of Massachusetts and having its usual place of business at East Hampton, in the said district of Massachusetts.

That they deny, on information and belief, that before the 5th day of April, A. D. 1853, or at any other time, William Smith, the complainant herein, was the original and first inventor of the new and useful improvements in corded and elastic fabrics, and in the machinery and in the process of weaving the same, described in the letters patent mentioned in the bill of complaint, or any of them, and deny that said improvements were never known or used before his alleged invention thereof, and that they were not, at the time of his application for a patent, in public use or on sale with his consent or allowance.

That these defendants, further answering on information and belief, admit that letters patent, dated the 5th day of April, 1853, were issued to said complainant for an alleged improvement in a process of weaving corded fabrics, but deny that said letters patent were granted or issued for any other improvement or invention; and whether or not said letters patent were applied for and issued in manner and form as stated in said bill of complaint these defendants do not know and are not informed, save by said bill of complaint, and leave the complainant to make such proof thereof as he may be advised is material.

These defendants, further answering upon information and belief, admit that said complainant did apply for and obtain an extension of said

letters patent for the term of seven years from and after the expiration of the term of fourteen years for which said letters patent were
15 originally granted; but these defendants do not know and are not informed, save by said bill of complaint, whether or not such proceedings were had thereon as stated in said bill, and leave the complainant to make proof thereof as he shall be advised is material.

These defendants, further answering, admit that letters patent, extended as aforesaid, were surrendered by said complainant, and that new and reissued letters patent, dated the 18th day of June, 1867, were granted to said complainant in lieu thereof, but these defendants deny that said letters patent were surrendered for any justifiable cause. On the contrary, on information and belief, they say that said surrender was made for the purpose of procuring a reissue of said letters patent for more than said complainant was the first inventor of.

These defendants, further answering, admit that said letters patent, reissued as aforesaid, were surrendered by said complainant, and that two several letters patent, dated the 14th day of January, 1868, and numbered respectively 2843 and 2844, were granted to said complainant thereon, but these defendants deny that said letters patent were surrendered for any justifiable cause. On the contrary, on information and belief, they say that said surrender was made for the purpose of procuring reissues of said letters patent for more than the said complainant was the first inventor of, and that he did obtain such reissues, and that they were not for the same invention as was the said original patent, but contained more, and more than he was the first inventor of, and unpatentable subject-matter, and that said surrender and reissue were fraudulent and void.

These defendants, further answering upon information and belief, deny that since the date of said reisssued patents the complainant has been in exclusive possession of the improvements patented therein, with the exception of the acts of these defendants and their confederates, and they are not informed, save by said bill of complaint, whether or not said complainant has put the same into practical use and used the same during all of said period, and leave the complainant to make such proof thereof as he may be advised is material.

These defendants, further answering on information and belief, deny that the complainant would have made large gains and profits from his said invention but for the acts of these defendants.

These defendants, further answering, deny that they ever con-
16 trived to injure said complainant or to deprive him of anything that he was legally or justly entitled to.

These defendants, further answering, say that they have used looms and processes in the manufacture of elastic webbing, but whether or not any of them are contained in or covered by either of said reissued patents No. 2843 and 2844 these defendants do not know, and are not informed save by said bill of complaint, and leave the complainant to make such proof thereof as he shall be advised is material. But these defendants deny that said complainant, from any such manufacture by them, has been in any manner injured or deprived of any profits which would otherwise have accrued to him, and these defendants deny that said complainant caused notice to be given to them as is alleged in said bill of complaint.

And these defendants, further answering on information and belief, say that said complainant was not the first inventor of the alleged invention patented by either of said two reissued patents, numbered 2843 and 2844, but that, on the contrary thereof, the same and every part of

the same, long before any invention thereof by said complainant, were described and contained in letters patent granted by the Government of Great Britain to James Vincent Desgrand, enrolled May 14, 1833; also in letters patent granted by the Government of Great Britain to Christopher Nickels, Thomas Ball, and John Woodhouse Bagley, enrolled June 24, 1852; also in letters patent granted by the Government of Great Britain to Robert William Sievier, enrolled February 6, 1839; also in letters patent granted by the Government of Great Britain to Christopher Nickels, enrolled Dec. 3, 1847; also described and contained in letters patent granted by the Government of France to Boreau à Rouen pour un metier a tisser les bretelles, dated Dec. 21, 1847, and described in Brevets d'Inventions, 2d series, vol. 12, pp. 265 and 266, and drawing referred to therein; also described and contained in letters patent granted by the Government of France to Sieurs Rattier et Gubal pour un tricot élastique, dated November 26, 1845, and described in Brevets d'Inventions, 2d series, vol. 5, p. 220; and that the same or substantial and material parts thereof, long before any invention thereof by said complainant, was known to and used by John Eabry, at Williamsburgh, N. Y., and in the city of New York, who now resides in the city of New York; Samuel L. Johnson, at New Brunswick, N. J.,
17 who now resides at New Brunswick, N. J.; Isaac E. Newton, at Waterbury, Conn., who now resides at Waterbury, Conn.; George Pritchard, at Waterbury, Conn., who now resides in Waterbury, Conn.; Thomas Corey, at the city of New York, who now resides at Canoga, Seneca County, New York; John R. Williams, at Middletown, Conn., who now resides at Middletown, Conn.; John Helm, at New Brunswick, N. J., who now resides at New Brunswick, N. J.; Franklin O. Painter, at Watertown, Conn., who now resides at East Hampton, Mass.; Henry G. Gurney, at Newark, N. J., who now resides at Newark, N. J.; Simon Levine, at Philadelphia, Pa., who now resides at Philadelphia, Pa.; William Sisserson, at Newark, N. J., who now resides at Newark, N. J.; W'm H. Kirk, at Waterbury, Conn., who now resides at West Cheshire, Conn.; Horace Cutler, at Springfield, Mass., who now resides at Springfield, Mass.; Thomas Burdett, at Springfield, Mass., who now resides at Springfield, Mass.; the firm of Warren & Newton, at Watertown, Conn., which was located at Waterbury, Conn.; the firm of Warner & Pritchard, at Watertown, Conn., which was located at Watertown, Conn.; the firm of Hotchkiss & Pritchard, at Waterbury, Conn., which was located at Waterbury, Conn.; the firm of Hotchkiss & Merriman, at Waterbury, Conn., which was located at Waterbury, Conn.; the Russell Manufacturing Company, at Middletown, Conn., which was located at Middletown, Conn.; the Nashawannuck Manufacturing Company, at East Hampton, Mass., which was located at East Hampton, Mass.; E. H. Sawyer, at East Hampton, Mass., and the city of New York, who now resides at East Hampton, Mass.; E. Thomas Sawyer, at East Hampton, Mass., who now resides at East Hampton, Mass.; M. W. Dodd, at Newark, N. J., who now resides at Newark, N. J.; John Ashwood, at London, England, and elsewhere, who now resides in the city of New York; and Horace H. Day, at New Brunswick, N. J., who now resides in the city of New York.

And these defendants submit to this honorable court that said complainant has no right to any further answer to said bill or any part thereof than is hereinabove contained, and no right to any injunction, account, or other relief prayed for in said bill; and these defendants pray

to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD H. SAWYER,
President Glendale Elastic Fabrics Co.

BENJ. DEAN, *of Counsel.*

18 UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 29th day of January, 1869, before me personally appeared E. H. Sawyer, the president of the Glendale Elastic Fabrics Co., the above named defendants, who, being by me duly sworn, deposes and says that he is president of the defendants, and that he has read the foregoing answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W'M CLITUS WITTER,
Notary Public, New York Co.

On the third day of February, A. D. 1869, the following replication was filed, namely:

Replication.—Filed Feb. 3, 1869.

The replication of William Smith, complainant, to the answer of the Glendale Elastic Fabrics Company, defendant.

The repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.

By his attorney.

CHAUNCEY SMITH.

19 This cause was thence continued from term to term to the October term of this court, A. D. 1869, when, to wit, Feb. 18, 1870, by leave of court, the following amendment to answer was filed, namely:

Amendment to answer.—Filed by leave of court, Feb. 18, 1870.

The defendants, further answering, on information and belief say that the complainant was not the first and original inventor of the alleged improvements specified as his invention in said reissue letters patent numbered 3014, but that on the contrary thereof, long before any invention thereof by him, the same was known to and used by Bethuel Dodd and John P. Wakeman, both at Newark, in the State of New Jersey, both now residing at said Newark; John H. Buckley, at Leicester, England,

now residing at East Hampton, Massachusetts; Edwin D. Stimson, at North Hampton, England, and in New York City, now residing in Brooklyn, New York; Ferdinand Doebley, at Philadelphia, Pennsylvania, now residing in said Philadelphia; Charles McCoy Bagot, at Coventry, England, West Hoboken, and Newark, New Jersey, now residing in Brooklyn, New York; and by Thomas Creichton, in the cities of New York and Brooklyn aforesaid.

And the defendants, further answering, on information and belief say that the elastic fabric, such as have been made, sold, and used by the defendant, and which is claimed by the complainant to be an infringement of his reissue patent numbered 3014, was described and contained in letters patent, granted by the Government of Great Britain to Robert William Sievier, enrolled February sixth, A. D. 1839, and in letters patent granted by the Government of France to Boreau "pour un métier a tisser les bretelles," dated December 21st, A. D. 1847, and in Brevets d'Invention, second series, volume 12, pages 265 and 266, and the drawing referred to therein; also in letters patent granted by the Government of France to Sieurs Rathir et Gubal "pour un tricot elastique," dated November 26th, A. D. 1845, and in Brevets d'Invention, second series, volume 5, page 220.

GLENDALE ELASTIC FABRICS CO.,
By BENJ. DEAN, *their Solicitor.*

BENJ. DEAN, *of Counsel.*

20 This cause was thence continued from term to term to the October term of this court, A. D. 1870, when, to wit, Jan. 6, 1871, by leave of court, the following amendment to answer was filed, namely:

Amendment to answer.—Filed by leave of court, Jan. 6, 1871.

The defendants, further answering on information and belief, say that the complainant was not the original and first inventor of the improvement specified as his invention in said reissue letters patent numbered 3014, but that, on the contrary thereof, long before any invention thereof by him, the same was known to and used by Robert Knott and James Knott, at Boston, in said district, said James and Robert now residing in said Boston; and that the same was known to and used by Samuel L. Johnson, at said Boston, said Johnson now residing at New Brunswick, in the State of New Jersey.

These defendants, further answering on information and belief, say that the improvement and fabric described in the plaintiff's said patent was made, used, and publicly sold by the complainant, and with his consent and allowance, more than two years before his application for a patent.

GLENDALE ELASTIC FABRIC CO.
By BENJ. DEAN, *their Solicitor.*

21 This cause was thence continued from term to term to the May term of this court, A. D. 1873, when, to wit, May 22, 1873, the following amendment to answer was filed, namely:

Amendment to answer.—Filed May 22, 1873.

The defendants come and pray that the amendments to the defendants' answer filed Feb. 18, 1870, and Jan. 6, 1871, be amended by insert-

ing after the figures 3014, wherever they occur therein, the figures and words following, namely, "2843 and 2844," and that said amendments to the answer stand as if said figures and words had been originally inserted therein.

By BENJAMIN DEAN,
Their Attorney.

At said May term of this court, A. D. 1873, publication of the testimony in this cause was ordered and the cause set down for hearing and fully heard before the honorable George F. Shepley, circuit
22 judge, holding said court. This cause was thence continued under advisement to the October term of this court, A. D. 1873, when, to wit, Feb. 13, 1874, the honorable George F. Shepley, circuit judge, sitting, the following decree was entered, namely:

Decree for perpetual injunction and for reference to a master.—Entered Feb. 13, 1874.

This cause came on to be heard at the May term, A. D. 1873, of this court, upon the pleadings and proofs, and was argued by counsel for the respective parties, and thence was continued under advisement to this present term; and now, upon consideration thereof, to wit, Feb. 13, 1874, it is ordered, adjudged, and decreed as follows, viz., that the letters patent referred to in the complainant's bill, being letters patent of the United States No. 9653, granted unto the complainant on the fifth day of April, A. D. 1853, and extended for the term of seven years from the fifth day of April, A. D. 1867, reissued June 18, 1867, said reissue being numbered 2656, as reissued Jan. 14, 1868, in division A, numbered 2843, and in division C, numbered 2844, is a good and valid patent; and that the said complainant was the original and first inventor of
23 the improvements described and claimed therein; and that the said defendants have infringed the said patent, and upon the exclusive rights of the complainant under the same.

And it is further ordered, adjudged, and decreed that the complainant recover of the defendants the profits which they have received or made, or which have accrued to them from said infringement by the manufacture, use, or sale of the improvement described, and secured by said letters patent as reissued in said divisions A and C, at any and all times since the said fourteenth day of January, A. D. 1868.

And it is further ordered, adjudged, and decreed that it be referred to John G. Stetson, a master of this court, to take and report to the court an account of the profits which the said defendants have received, or which have arisen or accrued to them from the manufacture, use, or sale of said improvement, or from said infringement, since the fourteenth day of January, A. D. 1868.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued against the defendants, according to the prayer of the bill.

And it is further ordered, adjudged, and decreed that the complainant recover of the defendants his costs of suit.

By the court.

JOHN G. STETSON, *Clerk.*

This cause was thence continued from term to term to the October term of this court, A. D. 1874, when, to wit, Jan. 6, 1875, the master to whom this cause was referred presented his report to the court, and the same was filed, and is as follows, namely:

Master's report.

Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH, COMPLAINANT,
v.
GLENDALE ELASTIC FABRICS COMPANY, DEFENDANTS. } In equity.

I, John G. Stetson, to whom the above-entitled cause was referred by a decree of said circuit court, Feb. 13, 1874, as master, to take and report to the court an account of profits which the said defendants have received, or which have arisen or accrued to them, from the manufacture, use, or sale of the improvement described and claimed in the reissued letter patent, division A, numbered 2843, and division C, numbered 2844, granted said complainant Jan. 14, 1868, or from their infringement of said letters patent since said Jan. 14, 1868, report:

I have not found any profits, such as I am required to take and report to the court an account of, under said decree.

The proceedings before me under this reference were:

1. March 26, 1874. On the application of complainant I assigned April 14, 1874, at 11 o'clock a. m., and my office, as the time and place for proceeding before me.

2. April 14, 1874. The complainant obtained an order upon the defendants to produce before me at the next meeting all their books, papers, writings, vouchers, and other documents applicable to the accounting.

26 3. April 28, 1874. Defendants produced a trunk of books, papers, etc., and complainant obtained leave to examine the same at his pleasure.

4. May 2, 1874. Complainant obtained an order that the president of the defendants and Moses H. Leonard, a director, the clerk, treasurer, and general agent of the defendants, appear before the master, May 12, 1874, and submit to an examination upon oath touching all matters contained in the reference in this case.

5. May 12, 1874. Edmund H. Sawyer, president, and Moses H. Leonard, a director, etc., of defendants, appeared and were examined upon oath by the complainant during this day, and the two following days, May 13th and 14th.

6. June 15, 1874. The order hereto annexed, marked "Order of Master, June 15, 1874," was entered, the defendants objecting, as appears by the endorsement upon said order.

7. June 19, 1874. Defendants brought in their account, which is filed herewith, marked "Defendants' Account." The complainant, not being satisfied with said account, obtained an order for an examination of the president and Moses H. Leonard, a director, etc., of defendants, viva voce.

8. June 24, 1874. Edmund H. Sawyer, president, and Moses H. Leonard, a director, etc., of defendants, appeared and were examined upon oath by the complainant during this day and during June 25th, 26th, 27th, and July 6th, 1874.

9. August 4, 1874. The complainant brought in the "State of facts and charges," which is so marked, and filed herewith, and the defendants brought in their "Discharge," which is so marked and filed herewith.

10. Oct. 8, 1874. Complainant announced that he had discharged his counsel, M'r Betton, and presented the paper which is filed herewith, entitled "Reasons for not employing counsel." This paper was received by the master without his, the master's, assenting to any of the statements of facts therein contained, or to any of the conclusions of law therein contained. The master referred M'r Smith to the order entered June 15, 1874. Counsel for defendants objected to any change in the order of proceedings and insisted that the master required the
27 accounting to proceed under the direction of the counsel selected by the complainant, and not under the direction of the complainant personally. The master allowed the complainant to proceed, conducting his cause personally. Complainant presented the paper marked "Exceptions to defendants' discharge," which is filed herewith.

11. Under the issues rasied by the pleading hereinbefore mentioned, evidence was introduced by both parties, and the complainant personally, and the defendants by counsel, were fully heard, the introduction of evidence and the arguments occupying sixteen days.

12. Nov. 5, 1874, just before the complainant closed his evidence in reply, he presented the paper which is filed herewith, marked "Additional claim."

EXTENT OF THE INFRINGEMENT.

The account of the defendants shows that they used machines containing the improvements patented to the complainant in the manufacture of 38,141¼ yards of Union, and 20,406½ yards of Terry web. This account also shows to what parties these webs were sold or sent, the number of yards sold or sent to each party, and the amount received therefor from each party. Moses H. Leonard, the treasurer and general agent of defendants, disclosed in his examination how these items of the account were made up, producing pencil memoranda giving the details of the same. The complainant, in his charge, alleges the manufacture and sale by defendants of 44,792¼ yards of Union, and 22,322 yards of Terry web, and annexes an account giving the items of the alleged sales in detail. A comparison of the two accounts, the complainant's and the defendants', shows that the defendants' account includes the complainant's, the items following those of the pencil memoranda referred to in their order, with certain other items added. The evidence did not show that a single yard of elastic web made upon looms infringing complainant's patents was ever made and sold by the defendants, other or more than that stated by them in their account. The complainant was repeatedly requested by the master, during the examination of the
28 witnesses, to produce, and after the evidence was closed, to point out any evidence tending to support any one of these added items not disclosed by defendants' account and pencil memoranda, but the complainant failed to produce or point out any such evidence except as to two or three of the first of these added items, and the evidence so produced and pointed out was clearly and satisfactorily explained by the defendants and did not sustain any one of the said added items in defendants' charge.

COST OF MANUFACTURE.

The defendants in their account stated the cost of manufacture of Union web and Terry web of the various widths manufactured by them. The examination of their treasurer disclosed how this cost was arrived at. The defendants kept a cost-book, in which, from time to time, they entered their estimates of the cost of the various articles manufactured by them. This cost-book was produced and the estimates therein of cost of materials of the Union web and the Terry web, manufactured by them upon machines containing the complainant's patented improvements, pointed out. The evidence showed that these estimates were made in the regular course of business, for the information of the defendant company and its officers. The estimate for either the Union web or the Terry web was made by taking an eighth of a yard of the manufactured web (Union or Terry, as the case might be), five inches in width, and dissecting it, and carefully weighing the separate materials of which it was composed, and calculating the cost of each material, and adding together the costs of the several materials, and so obtaining the whole cost of all the materials of which one-eighth of a yard of the manufactured web was composed. From the cost of the material composing one-eighth of a yard of the width of five inches, the cost of the materials composing a yard of the manufactured web of the same width was easily ascertained. Having ascertained the cost of the materials composing a yard of web five inches in width, the costs of yards of other widths were calculated by adding thereto, or subtracting therefrom, in proportion to the increase or decrease of width. The estimate for the Union web was made in October, 1867, and the
29 estimate for Terry web in August, 1870. To the cost of materials, as shown by these estimates, the defendants added fifteen (15) cents per yard for each width, as the average cost of manufacture. Of this fifteen cents, one and one-half (1½) cents were for interest on capital or capital stock of the defendants, for which they are not entitled to be allowed in this accounting. The explanations of the defendants' officers as to the remaining thirteen and one-half (13½) cents was not very satisfactory to me. The evidence showed that at some time (it was not very satisfactorily explained when) the officers of the company had made a calculation of the cost of manufacture of the several classes of articles manufactured by the company, namely: (1) elastic gusset webs, (2) cords and braids, (3) narrow webs, (4) suspender and heavy webs. This calculation was mainly made by E. Thomas Sawyer, who was the general agent of the defendant company from its formation until May, 1873, and who testified as follows:

"This calculation was made to get at the actual cost of the goods. I had been in the employ of the company for quite a time, and M'r Leonard coming in, we wished to know the actual cost of the goods." After describing the method of estimating the cost of the materials, M'r Sawyer continued as follows: "We added to this the cost of manufacture, which included labor, expenses, insurance, rent, stamps, and taxes. That makes up the thirteen and one-half cents, and one and one-half cents is added to that for interest on capital." And being asked "How did you get at the cost of manufacturing—that is, the thirteen and one-half cents?" he answered, "Some part of the cost we could get at accurately, say the labor, weaving. We took the amount of the expenses a year and the amount of goods manufactured, got the labor, and found out the proportion of each article, and from that made up our account.

We manufactured—

Gusset web at cost of 13½ ct's a yard.
Braid " " " 62½ " gross.
Suspenders " " " 3 " yard.

(I am speaking from memory now.)

Narrow webs at $3 a gross.

This account was as accurate as we could make it, and came out in the gross within five hundred dollars of our aggregate expenses.

30 "I know that account of the expense is correct—that is, the pencil memorandum."

Moses H. Leonard, who succeeded M'r Sawyer as general agent, while being examined, stated that the calculation which was made by them, referring to the fifteen (15) cents, estimated cost of manufacture, was very carefully made, and that he believed it as near correct as it was possible to make it. He produced certain papers as containing a part of the calculation, but could not fully explain them, as they did not contain the whole calculation. The defendants asked leave to file a supplemental statement showing how the 13½ cents, cost of manufacture, was made up, and this was granted them and a time fixed for that purpose, reserving to the complainant the right to examine M'r Leonard further after the supplemental statement was filed. After the time fixed for the filing of this statement, M'r Leonard informed the complainant and myself that he had been unable to make up the statement as he had intended, but he produced a paper stating in general terms what was included under the items of labor, board, interest, stamps, and taxes, expenses, insurance, and repairs in the papers which he had produced. No further examination was had as to the said 13½ cents per yard, cost of manufacture, or as to the papers produced by M'r Leonard as showing a part of the calculation by which that item of cost was arrived at.

The complainant in his charge, as explained by his evidence in support of it, allowed as cost of manufacture five (5) and six (6) cents for Union web, according to width, and six (6) and seven (7) cents for Terry web. This was, according to the evidence before me, the cost to the defendants of weaving only. No other item of cost of manufacture, as distinguished from cost of material, was admitted by the complainant in his charge, and no evidence was introduced by him tending to show what the expense was to the defendants of their manufacture of elastic webs. I am obliged to accept the evidence of E. Thomas Sawyer and Moses H. Leonard, supported by the memoranda produced by M'r Leonard, as to the thirteen and one-half cents per yard cost of manufacture by the defendants of elastic webs, unsatisfactory as this evidence and these memoranda are, in view of the fact that the comlainant made no examination of either Sawyer or Leonard as to the items shown

31 by said memoranda, and furnished no other basis upon which I am able to find the cost of manufacture by defendants of elastic webs exclusive of cost of material and of weaving.

The officers of the defendants on their examination in explanation of the account put in by defendants disclosed that the defendants had manufactured but one quality of Union web for the market. They had manufactured small quantities of other qualities, but only as experiments. They had estimated the cost of goods which they manufactured in small quantities as experiments as well as the cost of goods which they put upon the market. M'r Leonard pointed out an estimate of cost which, he said, was the estimate of the cost of the one quality of Union web which defendants made and sold to any considerable amount.

E. Thomas Sawyer, formerly general agent of the company, when

called as a witness by defendants, testified that the defendants made but one kind and quality of Union double-shuttle web for the market. M'r Sawyer also testified that all the silk that was used by the defendants in the manufacture of webs, Union goods, was dyed in Europe and imported by them; and on cross-examination the same witness testified as follows: "We have bought tram silk in the gum, and the people whom we bought it of got it dyed, but we never used it in making Union web."

The complainant in his charge in alleging the cost of materials composing the Terry web manufactured by defendants followed the statement of cost pointed out by defendants' officers in the cost-book as the cost of materials for that web, but in alleging the cost of materials composing the Union web, manufactured by defendants, the complainant followed a calculation of cost found in defendants' cost-book other than that which their officers and witnesses had pointed out as, and testified to be, the estimate of cost of materials of which such web was composed. There was no evidence before me that a single yard of Union web was ever sold by defendants of the kind upon which this calculation of cost was based. The complainant also alleged the cost of the silk composing defendants' Union web to be twelve (12) dollars a pound, instead of fourteen and a half (14½) dollars, as shown in the estimate of cost which defendants relied upon, and in support of this allegation testified
32 himself at great length, and made many references to the defendants' books and papers, tending to show the effect of dyeing silk tram of a given value and at a given expense of dyeing to different weights in reducing the cost per pound of the dyed silk, and claimed that he had clearly established the fact that the silk thus dyed by the defendants, or in this country for the defendants, and used by them, as he alleged, in the manufacture of Union web, cost but twelve (12) dollars a pound, instead of fourteen and a half (14½) dollars, as claimed by defendants.

This evidence I was not called to pass upon, except to decide that the defendants did not, to any considerable extent, use in the manufacture of Union web silk made or dyed in this country, to which conclusion I was compelled, in view of the positive testimony of E. Thomas Sawyer, that all the silk used by the defendants in the manufacture of Union web was dyed in Europe, and imported by them, and the testimony of Moses H. Leonard to substantially the same effect, and the testimony of John H. Buckley, a witness called by complainant, who was in the employ ot the defendants up to Sept., 1871, first as weaver, then as overseer, and afterwards as superintendent, and who testified as follows:

"Made not many qualities of Union goods; don't remember how many; not more than two or three at the most, sometimes not that at the same time; used different qualities of weft threads; might have used Bengal silk in making samples—used little, if any; used mostly a silk known in the trade as China Tram Paris Black; also, used a kind that was more heavily weighted in dyeing, which reduced the quality of the silk. I think these silks were all imported for the weaving. They did try some of domestic manufacture, but not to any great extent. During the whole of my service with the company, I don't remember using as many as 3,000 pounds, either of domestic or foreign silk. I remember silk they bought of the Dale Manufacturing Company. The company used silk in the manufacture of other goods. We made silk-face suspender-webbing in colors, single shuttle, at one time. They also manufactured large quantities of cords and braids, where they used silk.

Very little, if any, of the silk purchased of the Dale Manufacturing Company was used in the manufacture of elastic goring. The silks
33 were dyed of various weights, and I cannot speak with any certainty what the weight was."

The complainant having, in my judgment, failed to establish by evidence any cost for the materials composing such Union web as defendants manufactured in infring'ment of complainant's patents, I have in my finding upon this hearing taken such actual cost to be that included in the cost of Union web, as stated in defendants' account under the oath of Moses H. Leonard, their treasurer.

AMOUNT RECEIVED FROM SALES.

The defendants' account shows the amount received by them for the webs manufactured by them in infring'ment of complainant's patents. No evidence was introduced sufficient to raise in my mind a reasonable doubt but that the defendants' account is correct in this particular.

This accounting has been a very perplexing one to me, and a very burdensome one to the defendants, mainly from the fact that the complainant has attempted to conduct his own cause before me without understanding the proper and usual methods of proceeding in a hearing before a master, and with very little knowledge of the elementary rules of evidence, and an apparent incapacity to comprehend what to me often seemed the simplest of propositions.

On the day application was made to me to appoint a time and place for proceedings under the order of reference in this cause, an interview was had between the complainant, counsel for defendants, and myself, and I became satisfied from what then occurred that the accounting would be a very difficult one to conduct, unnecessarily annoying to the defendants, and unsatisfactory in its successive steps, if not in its final results, if the cause was conducted on the part of complainant in person; and from that time, upon every favorable opportunity, I urged the complainant to employ counsel to conduct his cause. The complainant constantly maintained that counsel could be of no use to him until he found himself unable to proceed further on account of his mistake,
when he made application to me to cancel past proceedings and
34 commence de novo. This I declined to do, except upon the express agreement of the complainant that he would thereafter intrust the management of his cause wholly to counsel, which he promised to do, and I entered the order of June 15, 1874. The complainant did not, however, intrust the management of his cause to his counsel, but at the next meeting after the passage of said order, complainant claimed to examine the defendants' officers himself, and upon my declining to allow him to do so, dictated questions to his counsel, which counsel repeated verbatim, without understanding, or pretending to understand, the purpose for which the questions were put; and this farce continued throughout the connection of counsel for complainant with the cause, notwithstanding the frequent objections of defendants' counsel and my repeated protests.

October 8, 1874, the complainant announced that he had discharged his counsel, as herein previously reported, and from that time to nearly the close of the evidence, as opportunity offered, I repeatedly advised the complainant to employ counsel to whom he could intrust the management of his cause, which he persistently declined to do. The result of the mismanagement of his cause by the complainant as herein indicated has been to protract the proceedings before me to at least thrice the

Co., Dec. 4, 1874," which paper I have further indorsed, "Received by me Dec. 14, 1874, John G. Stetson, master." This paper is scandalous, in terms and in substance, in its allegations as to (1) M'r Dean, counsel for defendants; (2) M'r Betton, counsel for complainant during a portion of the time this cause has been pending before me, (3) the defendants; (4) Moses H. Leonard, treasurer of defendants; (5) E. T. Sawyer, a witness called by defendants, and (6) John H. Buckley, a witness called by complainant, and contains much matter which is impertinent,
38 offensive, and insulting to me. It also contains allegations of gross misconduct on the part of certain counsel'ors of the circuit court, and asserts that I, as clerk of said court, was a party thereto, and thus, under the guise of objections to a master's report, the complainant in this cause attempts to have placed upon the files of this circuit court and made of record in said court his statement of a matter upon which he has twice petitioned the court, and in which, after hearing, the judgment of the court has twice been against him. I have carefully sealed up this paper and indorsed upon its cover "Smith v. Glendale Elastic Fabric Company. Within is a paper entitled 'Objections to master's report,' returned into court with the master's report in said cause, but sealed up, that the court may make such order as to the opening and filing or other disposition of the same as may be proper. John G. Stetson, master."

This paper, sealed up and indorsed, as I have stated, I return into court with this report.

Notwithstanding the objectionable form of the paper above referred to, as received from the complainant, entitled "Objections to master's report," I have carefully considered the same. (1) So far as this paper consists in simple assertions that a fact is, or that *con*tain facts are, different from what I have stated in my report, I make no further allusion to it. (2) So far as this paper consists in incorrect allegations of fact as to which I have made no finding in my report, I make no further allusion to it. (3) So far as this paper restates facts which I have in my report fully stated in other, though different, language, I make no further allusion to it. (4) So far as this paper alleges as facts matters which were wholly unsupported by any evidence before me, I make no further allusion to it. (5) I make no further allusion to any sentence in this paper which is in its terms clearly scandalous. The following matters do not, perhaps, clearly fall within either of the five preceding propositions:

A. The complainant, if I correctly understand him, alleges that I have suppressed in my report certain material facts. This is his language:

39 "Object to sec. 6, 7, 8, 9" (referring to page 2 of my report) "so far as relates to the following suppression of facts:

"1st. June 27, 1874, an order was entered that defendants account for the fifteen cents per yard unexplained by the thirtieth day of July, 1874, and complainant must bring in his accounting by the fifteenth day of July, 1874.

"2d. That the suppression of the fact that at the time appointed for the accounting by the defendants of the fifteen cents cost to be added on to the thirtieth of July, 1874, the master ruled the said fifteen cents out of the cost of the goods, as the defendants could not account for the said fifteen cents, the master saying they had had ample time to do so. (See complainant's evidence.)

"Sec. 9, page 2, complainant brought in his accounting on the 16th of July, 1874."

So far as relates to the matters referred to in the paragraphs above commencing 1st and 2d, I have fully stated the facts in the second paragraph on page 6 of this report.

The complainant may have handed me his "State of facts and charges," July 16, 1874, but attention was first called to it at a meeting before me, August 4, 1874, and this paper was then marked as filed.

B. Under the general heading "Cost of manufacture," in a statement of objections, complainant uses the following language:

"7. That in Terry webbs I deducted 28 per cent. as per record-book at a directors' meeting in January, 1872, that all goods manufactured by said company cost 28 per cent. less in 1871 than what they cost in 1869, which the cost of materials in the inventory-book fully demonstrates; now the Terries under the decree were not made or sold before 1871. Here is an item of over $4.000, according to their own statements, cost of materials and sales proved by their own books and statements, and yet the master says he can find nothing 'that he is required to report to the court under the decree.' See p. 1."

If I understand this quotation it means substantially that the Terry webs manufactured in infringement of complainant's letters patent and sold, were so manufactured and sold after January 1, 1871; that
40 all goods manufactured by defendants cost 28 per cent. less in 1871 than in 1869, and that by reason of this difference in cost the defendants made over four thousand dollars ($4,000) profits, for which they should account to complainant.

The record of the directors' meeting, held Feb. 29, 1872, and doubtless the one complainant refers to, is in these words: "Report of treasurer was presented with statements of business for past year and of present condition; showing that goods had been produced at a cost of 28 per cent. less the past year than in 1869."

(1.) This is a general statement, and probably means that the average cost of goods manufactured by defendants in 1871 was 28 per cent. less than the average cost of goods manufactured by them in 1869. The Terry webs, manufactured by complainant's process, constituted but a small part of defendants' products.

(2.) The estimate of cost of materials comprising Terry webs, which defendants produced as and claimed to be the actual cost of the Terry webs manufactured by them by complainant's process, and which estimate the complainant followed, was an estimate dated Aug. 22, 1870, and not in 1869.

(3.) Less than one-fifth ($\frac{1}{5}$) of the Terry webs, on which complainant claimed profits, were sold in 1871.

(4.) The whole claim of complainant on account of this 28 per cent. less cost of Terry webs, as shown in his "State of facts and charges," is but $2,109.73, and not "over $4,000," as stated in the above quotation from the paper which I return into court sealed up.

C. It is true, as substantially alleged by complainant, that at almost every stage of the proceedings before me I advised the complainant to employ counsel, and that he declined so to do, saying, sometimes, that "no man but himself could find out matter from the books to show any profits," and at others that "any attorney would be useless in the matter, being ignorant of the art and science of manufacture, etc." I especially advised the complainant to employ counsel to examine such draft report as I should submit and to prepare objections as a foundation for exceptions, if there should be cause for objections or exceptions thereto.

The necessity as well as value of this advice will be apparent
41 upon examination of the complainant's paper entitled "Objec

tions to master's report," if the same shall be opened and examined by the court.

The amount paid for printing draft reports, as to one of which a blank was left on page 12 of this report, when submitted as a draft report, is twenty-eight dollars and five cents.

Respectfully submitted.

JOHN G. STETSON, *Master.*

Dec. 23, 1874, I transmitted to the complainant, and to counsel for defendants, a copy of all the foregoing, as a second draft report. The draft report transmitted to the complainant I inclosed in a letter, a copy of which is hereto annexed, marked "Master's letter, second draft report."

Jan. 4, 1875, I received from the complainant a paper signed by him, entitled "Objections to master's report, dated Jan. 1, 1875," which paper I have indorsed, "Received by me Jan. 4, 1875, John G. Stetson, master." This paper, in my judgment, is not a fit paper to be placed on the files of the court. I have therefore carefully sealed it up and indorsed upon its cover, "Smith v. Glendale Elastic Fabrics Company. Within is a paper entitled 'Objections to master's report, dated Jan. 1, 1875,' returned into court, with the master's report on said cause, but sealed up, that the court may make such order as to the opening and filing, or other disposition of the same, as may be proper. John G. Stetson, master." This paper, so sealed up and indorsed, I return into court, with this report.

Notwithstanding the objectionable form of the paper above referred to, entitled, "Objections to master's report, dated Jan. 1, 1875," I have carefully considered the same, and I find nothing therein which in my judgment should cause me to modify my report as submitted to the parties as a second draft report, unless I should do so because
42 the complainant in this paper "demands that the books of the company, now under the care of the master, be so retained by him until the final hearing before the court." An insulting insinuation which accompanies this demand I pass without further comment. I do not understand it to be my duty to return into court these books (thirty-two in number) or the papers and samples produced by defendants, but, on the contrary, believe that I should deliver them to the defendants upon their request, after filing this report in court. The defendants, by their counsel, have requested me to put them in possession of their books, papers, and samples as soon as they are entitled to the same; but upon my informing defendants' counsel of the demand made upon me by complainant, as above stated, and upon my suggesting that I desired to retain these books, papers, and samples, so as to afford complainant an opportunity to obtain the judgment of the court in the premises, they have consented that I may retain them until Feb. 10, 1875. I have accordingly sealed them up in two packages, which I will retain in my possession until said Feb. 10, 1875, subject to such order as to the same as the court, upon the motion of either party, may enter.

Respectfully submitted.

JOHN G. STETSON, *Master.*

43 *Master's letter. Second draft report.*

Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH, COMPLAINANT,
v.
GLENDALE ELASTIC FABRICS COMPANY, DEFENDANTS. } In equity.

MASTER'S OFFICE, *Dec.* 23, 1874.

To William Smith, complainant, 250 Hudson street, New York.:

SIR: I enclose herewith a second draft of my report in the above-entitled cause, which report will be retained by me in the master's office until Jan. 4, 1875, to which date either party may file with me objections to the same. I very earnestly advise you to submit this draft to counsel and to intrust to counsel the preparation of objections, if, in the judgment of counsel, there may be cause for objections thereto. I give this advice at this time because I believe it to be almost certain that, upon inspection of the paper which, upon my submitting to you a first draft report, you transmitted to me, indorsed "Objections to master's report," the court will adjudge you in contempt and hold you to answer therefor, and I should be exceedingly sorry if you should aggravate your offence by a repetition of it.

Very respectfully,

JOHN G. STETSON,
Master.

44, 45

46, 47 *Defendants' account.—Filed with master June 19th, 1874.*

Total sales of Union web January 1, 1868, to December 31, 1873.				*Total Union web manufactured January 1, 1868, to December 31, 1873.*	
	Y'ds.				
Sears & Warner	3,272	2,471 74		3 inch 4,580, @ 52.90	2,422 82
Faxton, Elms & Co	8,025	6,542 79		3½ " 6,964½, 59.22	4,124 38
Nichols & Farnsworth	1,125	495		4 " 2,085, 65.54	1,366 51
E. K. Butler	2,820	1,260 50		4½ " 3,367, 71.86	2,419 53
Laing & McGinnis	1,075	885		5 " 10,480, 78.18	8,193 26
Alex. Strong & Co	1,950	962 34		5½ " 10,423½, 85.50	8,912 10
How Bros. & Co	22,016	14,525 50			
Sweetser, Skilton & Dale	803½	662 92			
Wilson & Merrill	325	178 50			
Cragin, Page & Co	125	100			
Richards & Bryant	100	88			
Isaac Colburn & Co	75	60			
Ross, Pearce & Co	550	354 30			
Pelton, Snell & Co	100	55			
W. L. Hitchcock	8½	1 27			
Stoddard, Lovering & Co	3,005½	1,890 85			
	45,375¼		30,533 62		
Less Union web on hand January 1, 1868, included in the above	2,933½	2,294 13			
Allowances and returned	4,301	3,174 27	5,468 40		
	38,141¼		25,065 22		
Cost more than sold for			2,373 38		
			27,438 60		27,438 60

5. That the invention in question has been used by defendants in the manufacture of 22,322 yards of Terry elastic webbing since 1868, as per schedules annexed.

6. That this Terry webbing was manufactured by them at a
56 cost of $5,425.02, as per schedules hereto annexed.

7. That the defendants sold this Terry webbing for $10,057.13, as per schedules hereto annexed, net.

8. And defendants should be charged as follows for Terry webbing:

Dr. Net receipts	10,057 13
Cr. Cost	5,425 02
Whole profits	4,632 11

9. And complainant respectfully insists that defendants should be charged on both Union and Terry:

Union	8,478 97
Terry	4,632 11
Balance due complainant	13,111 08

By his solicitor.

GEO. E. BETTON.

57 *Union elastic web.*

HOW BROTHERS & CO.

Month.	Date.	3 Inches.	3² Inches.	4 Inches.	4² Inches.	5 Inches.	5² Inches.	Yards.	
1868.									
April.	16						5½	1,175, *a* 85 cts.	998 75
May.	11		3²					50, *a* 45 "	22 50
"	"			4				75, *a* 55 "	41 25
"	"					5		25, *a* 80 "	20 00
"	"					5		225, *a* 80 "	180 00
"	"						5½	50, *a* 88 "	44 00
"	13					5		175, *a* 80 "	140 00
"	20					5		400, *a* 80 "	320 00
"	"						5½	200, *a* 88 "	176 00
"	23					5		450, *a* 80 "	360 00
"	28						5²	175, *a* 88 "	154 00
"	"					5		300, *a* 80 "	240 00
June.	2d						5²	150, *a* 88 "	132 00
"	2d					5		125, *a* 80 "	100 00
"	9					5		350, *a* 80 "	280 00
"	"						5²	50, *a* 88 "	44 00
"	10						5²	150, *a* 88 "	132 00
"	16					5		325, *a* 80 "	260 00
"	"						5²	75, *a* 88 "	66 00
"	20					5		450, *a* 80 "	360 00
"	"						5²	150, *a* 88 "	132 00
"	"		3²					125, *a* 56 "	70 00
58 "	25						5²	75, *a* 88 "	66 00
"	"					5		625, *a* 80 "	500 00
"	29					5		375, *a* 80 "	300 00
"	"						5²	300, *a* 88 "	264 00
July.	3d						5²	200, *a* 88 "	176 00
"	"					5		25, *a* 80 "	20 00
"	6						5²	200, *a* 88 "	176 00
"	"					5		25, *a* 80 "	20 00
"	"						5²	250, *a* 88 "	220 00
"	8						5²	250, *a* 88 "	220 00
"	9						5²	125, *a* 88 "	110 00
"	11						5²	125, *a* 88 "	110 00
"	14						5²	275, *a* 88 "	242 00
"	18						5²	150, *a* 88 "	132 00
"	23						5²	175, *a* 88 "	154 00
"	"						5²	150, *a* 88 "	132 00
"	"						5²	175, *a* 88 "	150 00
"	24						5²	125, *a* 88 "	110 00

Union elastic web.

HOW BROTHERS & CO.—Continued.

Month.	Date.	3 Inches.	3½ Inches.	4 Inches.	4½ Inches.	5 Inches.	5½ Inches.	Yards.	
1868.									
July.	25						5½	250, *a* 88 cts.	220 00
"	24					5		300, *a* 75 "	225 00
"	25						5½	125, *a* 88 "	110 00
"	22						5½	250, *a* 88 "	220 00
59 July.	31						5½	125, *a* 88 cts.	110 00
Sep.	24						5½	375, *a* 85	318 75
"	"						5½	250, *a* 85	212 50
"	30						5½	375, *a* 85	318 75
"	"						5½	250, *a* 85	212 50
Nov.	13		3½					50, *a* 54	28 00
"	"			4				125, *a* 62	80 00
"	18			4				250, *a* 62	155 00
"	23				4½			125, *a* 70, less 2% off	85 31
Dec.	5		3½					125, *a* 54 67 50	
"	"	3						50, *a* 46 23 00	
								90 50	
								2½% 2 26	
									88 27
"	"	3						675, *a* 42½	286 84
*Dec.	15	3						75, *a* 46 34 50	
"	"		3½					125, *a* 54 67 50	
								102 00	
								2½% 2 55	
									99 45
"	24		3½					125, *a* 54	67 50
"	"	3						100, *a* 46	46 00
"	31		3½					75, *a* 46	34 50
"	"		3½					50, *a* 54	27 00
"	"	3						25, *a* 46	11 50
60 1869.									
Jan'y	9					5		450, *a* 66½ cts.	598 50
"	"				4½			250, *a* 55 " 137 50	
								5% 6 87	
									130 63
"	"						5½	300, *a* 66½ "	109 50
"	"					5		2,000, *a* 66½ "	1,330 00
"	"					5		825, *a* 66½ "	548 62
"	"		3½					175, *a* 54 "	94 50
"	"	3						125, *a* 46 "	57 50
"	21			4				225, *a* 62 "	139 50
"	"		3½					225, *a* 54 "	121 50
"	"	3						150, *a* 46 "	69 00
"	27	3						100, *a* 46 "	46 00
"	29	3						100, *a* 41 "	46 00
Feb'y	10			4				75, *a* 62 .... 46 50	
"	"		3½					25, *a* 54 .... 13 50	
"	17		3½					125, *a* 54 .... 67 50	
"	"			4				75, *a* 62 .... 46 50	
	23		3½					50, *a* 54 .... 27 00	
"	"	3						50, *a* 46 .... 23 00	
"	"			4				100, *a* 62 .... 62 00	
	24		3½					125, *a* 54 .... 67 50	
"	"			4				75, *a* 62 .... 46 50	
	27	3						25, *a* 46 .... 11 50	
61 Feb'y	27		3½					125, *a* 54 .... 67 50	
								479 00	
								2½ 11 97	
									467 03
Jan'y	9		3½					175, *a* 54 cts	94 50
"	"	3						125, *a* 46 "	87 50
"	21			4				225, *a* 62 "	139 50
"	"		3½					225, *a* 54 "	121 50
"	"	3						150, *a* 46 "	69 00
"	26	3						100, *a* 46 "	46 00
M'ch	3			4				75, *a* 62 " 46 50	
"	"		3½					50, *a* 54 " 27 00	
"	"	3						25 *a* 46 " 11 50	
"	10			4				25, *a* 62 " 15 50	
"	"		3½					175, *a* 54 " 94 50	
"	"	3						50, *a* 46 " 23 00	
April	17			4				75, *a* 62 " 46 50	
"	"		3½					375, *a* 51 "	191 25
								264 50	

*See latter end of this %.

Union elastic web.

HOW BROTHERS & CO.—Continued.

Month.	Date.	3 Inches.	3½ Inches.	4 Inches.	4½ Inches.	5 Inches.	5½ Inches.	Yards.	
1869.									
May	7							2½% off 6 61	257 89
"	"	3						75, *a* 43	32 25
"	22		3½					150, *a* 51	76 50
June	14	3						75, *a* 43	32 25
"	"		3½					125, *a* 51	63 75
July	26	3						75, *a* 43	32 25
62 Aug.	2d		3²					50, *a* 51 cts.	25 50
"	"			4				50, *a* 60	30 00
"	9	3						50, *a* 43	21 50
"	"		3²					125, *a* 51	63 75
"	"			4				25, *a* 60	15 00
"	30		3½					125, *a* 30	37 50
"	"	3						75, *a* 43	32 25
"	"			4				50, *a* 60	30 00
September	20		3²					125, *a* 50	62 50
Oct.	7					5		500, *a* 80	400 00
"	"						5²	175, *a* 88	154 00
"	"	3						50, *a* 40	20 00
1870.									
May	14		3³					216, *a* 47²	102 60
Aug.	2	3						50, *a* 45	22 50
"	"		3²					50, *a* 50	25 00
"	9	3						100, *a* 45	45 00
"	"		3²					100, *a* 50	50 00
"	18		3²					50, *a* 50	25 00
"	"	3						75, *a* 45	33 75
"	27		3²					175, *a* 50	87 50
"	"	3						150, *a* 45	67 50
Sep.	16	3						100, *a* 45	45 00
"	"		3²					75, *a* 50	37 50
63 Sep.	24		3²					75, *a* 50 cts.	37 50
"	"	3						125, *a* 45	56 25
Oct.	1	3						150, *a* 45	67 50
"	"		3²					50, *a* 50	25 00
Oct.	10	3						150, *a* 45	67 50
"	"		3²					25, *a* 50	12 50
"	15		3²					50, *a* 50	25 00
"	"	3						25, *a* 45	11 25
"	19	3						75, *a* 45	33 75
"	22		3²					25, *a* 50	12 50
"	"	3						25, *a* 45	11 25
Nov.	3		3²					75, *a* 50	37 50
"	"	3						225, *a* 45	101 25
"	12	3						225, *a* 45	101 25
"	"		3²					75, *a* 50	37 50
"	16	3						25, *a* 45	11 25
"	23	3						150, *a* 45	67 50
"	"		3²					50, *a* 50	25 00
Dec.	8	3						50, *a* 45	22 50
"	"		3²					50, *a* 50	25 00
M'ch	16			4				75, *a* 62	46 50
"	"		3²					50, *a* 54	27 00
"	"	3						25, *a* 46	11 50

64 *Omitted in Dec.*, 1868.

1868.	Date.	3 Inches.	3½ Inches.	4 Inches.	4½ Inches.	5 Inches.	5½ Inches.	Price.	Sold.	Cost.	
Dec.	11		3²					125, *a* 54 cts.	67 00		
"	"	3						50, *a* 46	23 00		
"	22	3						75, *a* 46	34 50	13, 264 23	
"	"		3²					125, *a* 54 less 2%	65 81	4, 656 97	gain.
		4, 175	4, 716	1, 600	375	7, 950	7, 225	26, 041	17, 921 20	17, 921 20	

3 in.,	4, 175 yds	3 in.,	4, 175	cost	1, 477 53
3½ "	4, 716	3½ in.,	4, 716	cost	1, 907 56
4 "	1, 600	4 in.,	1, 600	cost	726 56
4½ "	375	4½ in.,	375	cost	193 39
5 "	7, 950	5 in.,	7, 950	cost	4, 502 09
5½ "	7, 225	5½ in.,	7, 225	cost	4, 457 10
	26, 041 yds. sold for $17, 921. 20		26, 041	yds. cost	13, 264 23

65 *Union Elastic Web.*

SWEETSER, SKILTON AND DALE.

Month.	Date.	5 Inches.	5½ Inches.		Sold.	Cost.
1868.				Y'ds. Price.		
Feb.	20	5	.....	25, *a* 80 cts.	20 00	.....
"	27	5	.....	77½, *a* 80 cts.	62 00	.....
M'ch	3	5	.....	25, *a* 80 cts.	20 00	.....
"	11	5	.....	75, *a* 80 cts.	60 00	.....
"	18	.....	5½	25, *a* 90 cts.	22 50	.....
"	23	.....	5½	44, *a* 90 cts.	39 60	.....
"	"	5	.....	50, *a* 80 cts.	40 00	.....
"	29	.....	5½	26, *a* 90 cts.	23 40	.....
"	"	5	.....	27, *a* 80 cts.	21 60	.....
April	9	.....	5½	50, *a* 90 cts.	45 00	.....
"	"	5	.....	50, *a* 80 cts.	40 00	.....
"	18	5	.....	25, *a* 80 cts.	20 00	.....
"	"	.....	5½	25, *a* 20 cts.	22 50	.....
"	24	5	.....	100, *a* 80 cts.	80 00	.....
"	29	5	.....	25, *a* 90 cts.	20 00	.....
"	"	.....	5½	25, *a* 90 cts.	22 50	.....
May	5	5	.....	50, *a* 80 cts.	40 00	.....
"	16	.....	5½	4½, *a* 90 cts.	3 82	465 49
"	"	5	.....	75, *a* 80 cts.	60 00	197 43 gain.
		604½	199½	803¾	$662 92	$662 92

5 in., 604½
5½ in., 199½

803¾ y'ds, sold for $662 92

in. 604½, cost $342 57
5½ in. 199½, cost $122 92

803¾ y'ds $465 49

66 WILSON AND MERRILL.

	Date.	4 Inches.	3½ Inches.		Sold.	
1869.				Y'ds. Price.		
Jan'y	28					
"	"	.....	.....	100, *a* 62 cts.	62 00	.....
"	"	.....	3½	25, *a* 54 cts.	13 50	.....
Feb'y	6	.....	3½	75, *a* 54 cts.	40 50	136 53 cost.
Nov.	26	.....	3½	125, *a* 50 cts.	62 50	41 97 gain.
		100	225	325	$178 50	$178 50

3½ in., 225
4 in., 100

325 y'ds, sold for 178. 50

3½ in. 225, cost $91 02
4 in. 100, cost $45 51

325 ..... 136 53

67 FAXON AND ELMS.

Month.	Date.	3½ Inches	4 Inches.	4½ Inches.	5 Inches.	5 Inches.		Sold.	Cost.
1868.							Y'ds. Price.		
Feb'y	3	.....	.....	4½	.....	.....	250, *a* 72½ cts.	181 25	.....
"	19	.....	.....	.....	.....	5½	150, *a* 88 cts.	132 00	.....
"	"	.....	.....	4½	.....	.....	250, *a* 72 cts.	181 25	.....
"	"	3½	.....	.....	.....	.....	100, *a* 52½ cts.	52 50	.....
"	27	.....	.....	.....	.....	5½	200, *a* 88 cts.	176 00	.....
"	"	.....	.....	4½	.....	.....	25, *a* 72½ cts.	18 12	.....
"	"	3½	.....	.....	.....	.....	25, *a* 52½ cts.	13 12	.....
M'ch	6	.....	.....	.....	.....	5½	75, *a* 88 cts.	66 00	.....
"	"	.....	.....	.....	5	.....	125, *a* 80 cts.	100 00	.....
"	"	.....	.....	4½	.....	.....	75, *a* 72½ cts.	54 37	.....
"	"	3½	.....	.....	.....	.....	75, *a* 52½ cts.	39 37	.....
"	11	.....	.....	.....	.....	5½	50, *a* 88 cts.	44 00	.....
"	"	.....	.....	.....	5	.....	175, *a* 80 cts.	140 00	.....
"	"	.....	.....	4½	.....	.....	125, *a* 72½ cts.	90 62	.....
"	"	3½	.....	.....	.....	.....	50, *a* 52 cts.	26 25	.....

FAXON AND ELMS—Cotinued.

Month.	Date.	3½ Inches.	4 Inches.	4½ Inches.	5 Inches.	5½ Inches.		Sold.	Cost.
1868.							Y's. Price.		
M'ch.	19				5		100, *a* 88 cts.	88 00	
"	"		4				25, *a* 62½ cts.	15 62	
"	"			4½			50, *a* 72 cts.	36 25	
"	"				5		125, *a* 80 cts.	100 00	
"	23					5½	175, *a* 88 cts.	154 00	
"	23				5		125, *a* 80 cts.	100 00	
6 M'ch	23			4½			50, *a* 72 cts.	36 25	
"	"		4				75, *a* 62½ cts.	46 87	
	25			4½			75, *a* 72 cts.	54 37	
	27				5		200, *a* 80 cts.	160 00	
	"			4½			75, *a* 72½ cts.	54 37	
	"		4				25, *a* 62½ cts	15 62	
April	3					5½	25, *a* 88 cts.	22 00	
"	"				5		225, *a* 80 cts.	180 00	
"	"			4½			100, *a* 72½ cts.	72 50	
"	8					5½	200, *a* 88 cts.	176 00	
"	"				5		275, *a* 80 cts.	220 00	
"	13					5½	50, *a* 88 cts.	44 00	
"	"				5		350, *a* 80 cts.	280 00	
"	17					5½	150, *a* 88 cts.	132 00	
"	"				5		250, *a* 80 cts.	200 00	
"	22				5		25, *a* 80 cts.	20 00	
"	"					5½	100, *a* 88 cts.	88 00	
"	24				5		100, *a* 80 cts.	80 00	
"	28					5½	175, *a* 88 cts.	154 00	
"	30				5		425, *a* 80 cts.	340 00	
May	8					5½	175, *a* 88 cts.	154 00	
69 May	8				5		500, *a* 80 cts.	400 00	
"	12					5½	225, *a* 88 cts.	198 00	
"	"				5		100, *a* 80 cts.	80 00	
	14				5		250, *a* 80	200 00	
	"					5½	175, *a* 88	154 00	
	20				5		100, *a* 80	80 00	
	"					5½	25, *a* 88	22 00	
	23					5½	400, *a* 88	352 00	
June	11					5½	225, *a* 88	198 00	4, 622 74
July	13				5		650, *a* 80	520 00	1, 919 96 gain
		250	125	1, 075	4, 100	2, 575	8, 125 yds	$6, 542 70	6, 542 70

	yds.		
3½ in.,	250	3½ in., 250 cost	$101 12
4 in.,	125	4 in., 125 cost	$56 89
4½ in.,	1, 075	4½ in., 1, 075 cost	$554 38
5 in.,	4, 100	5 in., 4, 100 cost	$2, 321 83
5½ in.,	2, 575	5½ in., 2, 575 cost	$1, 588 52
	8, 125 y'ds, sold for $6, 542 70	8, 125 y'ds	4, 622 74

70 SEARS & WARREN.

		3½	4	4½	5	5½		Sold.	Cost.
1868.							Yds. Price.		
Feb'y	18			4½			250, *a* 72	181 25	
"	27					5½	200, *a* 88	176 00	
"	"				5		100, *a* 80	80 00	
M'ch	3					5½	100, *a* 88	88 00	
"	5				5		25, *a* 80	20 00	
"	11				5		150, *a* 80	120 00	
"	25					5½	75, *a* 88	66 00	
"	"				5		275, *a* 80	220 00	
"	27					5½	150, *a* 88	132 00	
"	"				5		75, *a* 80	60 00	
Aug.	14	3½					125, *a* 52½	65 62	
"	"		4				125, *a* 62½	78 13	
"	"			4½			125, *a* 72½	90 62	
"	"				5		500, *a* 80	400 00	
"	"					5½	200, *a* 88	176 00	
Sep.	1	3½					250, *a* 52½	131 25	
"	"		4				247, *a* 62½	154 38	
1870.									
M'ch 3,	3					5½	125, *a* 72½	96 87	1, 784 14
"	18					5½	175, *a* 77½	135 62	687 60 gain
		375	372	375	1, 125	1, 025	3, 272 y'ds	$2, 471 74	$2, 471 74

71	3½ in.,	375	3½ in., 375, cost	$151 69
	4 in.,	372	4 in., 372, cost	$169 65
	4½ in.,	375	4½ in., 375, cost	$193 39
	5 in.,	1,125	5 in., 1,125, cost	637 09
	5½ in.,	1,025	5½ in., 1,025, cost	632 32
		3,272 y'ds, sold for $2,471.74	3,272	$1,784 14

RICHARDS & BRYANT.

	Date.	5½ Inches.		Sold.	Cost.
1870.			Yds. Price.		
April.	9	5½	100, *a* 88 cts.	88 00	61 69
					26 31 gain.
				$88 00	$88 00

CRAGIN, PAGE & CO.

		Inches.		Sold.	
1870.			Yds. Price.		
M'ch	9	5½	120, *a* 80	$100 00	74 09
					25 91 gain.
				$100 00	$100 00

PELLIN, SNELL & CO.

		Inches.		Sold.	
1870.			Yds. Price.		
M'ch	15	3½	100, *a* 55 cts.	55 00	40 45
					14 55 gain.
				$55 00	$55 00

72 STODDARD, LOVERING & CO.

Month.	Date	3½ Inches.	4 Inches.	4½ Inches.	5 Inches.	5½ Inches.		Sold.	Cost.
1868.							Yards. Price.		
Jan'y	14				5		25, *a* 80 cts.	$20 00	
"	17	3½					50, *a* 57½ "	28 25	
"	28				5		100, *a* 72½ "	72 50	
"	"				5		300, *a* 72½ "	217 50	
"	"					5½	50, *a* 90 "	45 00	
"	14				5		75, *a* 80 "	60 00	
"	25			4½			25, *a* 75 "	18 75	
"	27	3½					300, *a* 45 "	135 00	
"	"		4				275, *a* 50 "	137 50	
"	"					5½	225, *a* 70 "	157 50	
"	29			4½			25, *a* 50 "	12 50	
Feb'y	13					5½	250, *a* 85 "	212 50	
M'ch	25			4½			25, *a* 75 "	18 75	
"	"				5		50, *a* 85 "	42 50	
"	"					5½	25, *a* 95 "	23 75	
"	26		4				125, *a* 77½ "	96 70	
April	3d	3½					25, *a* 50 "	12 50	
"	"		4				25, *a* 60 "	15 00	
"	15			4½			125, *a* 75 "	93 75	
"	16	3½					25, *a* 55 "	13 75	
"	21	3½					100, *a* 52½ "	52 00	
"	27				5		125, *a* 85 "	106 25	

73

Month.	Date.	3² Inches.	4 Inches.	4² Inches.	5 Inches.	5² Inches.		Sold.	Cost.
1868.							Y'ds.		
May.	1st.	.....	4	.....	.....	.....	25, *a* 77²	19 37	.....
"	6	.....	4	.....	.....	.....	25, *a* 60	15 00	.....
"	9	.....	4	.....	.....	.....	50, *a* 65	32 50	.....
July.	15	.....	4	.....	.....	.....	75, *a* 60	45 00	.....
"	"	.....	4	.....	.....	.....	50, *a* 60	30 00	.....
"	25	.....	4	.....	.....	.....	25, *a* 60	15 00	.....
"	15	.....	.....	.....	5	.....	25, *a* 85	21 25	.....
Aug.	11	.....	4	.....	.....	.....	25, *a* 60	15 00	.....
Sep.	30	.....	.....	.....	5	.....	150, *a* 80	120 00	.....
Oct.	10	.....	.....	.....	5	.....	50, *a* 80	40 00	.....
July.	15	.....	.....	.....	.....	5²	5½, *a* 70	3 85	1,488 79
Oct.	10	.....	.....	.....	5	.....	25, *a* 80	20 00	480 63 gain.
		500	700	200	925	555²	2,880 y'ds.	$1,969 42	1,969 42

NOTE.—No discount from the above, because it was not rendered in the account the full price for which the goods were sold, and because there has been no return made from Oct. 10th, 1868, and through 1869.

74

Inches.	Yards.
3½	500
4	700
4½	200
5	925
5½	555²
	2,880², sold for $1,969.42.

Inches.	Yards.	Cost.
3½	500	202 25
4	700	318 57
4½	200	103 14
5	925	523 83
5½	555²	341 00
	2,880 y'ds.	$1,488 79

LAING AND McGUINNESS.

Month.	Date.	5½ Inches.	5 Inches.	Price.	Sold.	Cost.
1868.						
Aug.	7	.....	.....	.....	.....	.....
"	"	5½	.....	250 y'ds, *a* 90 c'ts	225 00	.....
"	"	.....	5	825 " *a* 80 "	660 00	.....
		250	825	1,075	$885 00	621 42
				Allowed—see voucher 7	51 25	212 33 gain.
					$833 75	$833 75

	Y'ds.
5 in.,	825
5½ in.,	250
	1,075 y'ds, sold for 833.75.

5 in., 825, cost $467 20
5½ in., 225, cost $154 22
1,075 y'ds, cost $621 42

75

ALEXANDER STRONG & CO.

Month.	Date.	3 Inches.	3½ Inches.	4 Inches.		Sold.	Sold.	Cost.
1869.					Y'ds.			
Jan'y.	26	.....	3½	.....	125, *a* 54 c'ts	67 50	.....	.....
					5%	3 37	64 13	.....
Feb'y.	15	3	.....	.....	250, *a* 26 c'ts	155 00	.....	.....
"	"	.....	3²	.....	125, *a* 54 c'ts	67 50	.....	.....
						182 50		
					5%	9 12	173 38	.....

ALEXANDER STRONG & CO.—Continued.

Month.	Date.	3 Inches.	3½ Inches.	4 Inches.		Sold.	Sold.	Cost.
1869.					Y'ds.			
M'ch.	18	.....	.....	4	100, *a* 62 c'ts.....	62 00	.....	.....
"	"	.....	3²	.....	125, *a* 54 c'ts.....	67 50	.....	.....
"	"	3	.....	.....	75, *a* 46 c'ts.....	34 50	.....	.....
						164 00		
					2½%	4 10	159 90	.....
M'ch.	31	3	.....	.....	125, *a* 46 c'ts.....	57 50	.....	.....
"	"	.....	.....	4	150, *a* 62 c'ts	93 00	.....	.....
						150 50		
					2½%	3 76	146 74	.....
April.	12	3	.....	.....	125, *a* 46 c'ts.....	57 50	.....	.....
					2½%	1 43	56 07	.....
"	26	.....	3²	.....	175, *a* 54 c'ts.....	94 50	.....	.....
"	"	3	.....	.....	125, *a* 46 c'ts.....	57 50	152 00	.....
May.	6	3	.....	.....	125, *a* 46 c'ts	.....	57 50	.....
"	"	.....	3²	.....	75, *a* 54 c'ts.....	.....	40 50	.....
76 May	18	3	.....	.....	125, *a* 46 c'ts.....	57 50	.....	.....
					2½%	1 44	56 06	.....
	24	3	.....	.....	125, *a* 46 c'ts	57 50	.....	747 03
					2½%	1 44	56 06	215 31 gain.
		1, 075	625	250	1, 950		$962 34	$962 34

Yd's.			
3 in., 1,075	3 in., 1,075, cost.....	$380 44
3½ in., 625	3½ in., 625, "	$252 81
4 in., 250	4 in., 250, "	$113 78
1, 950, sold for $962. 34.	1, 950 y'ds, cost.....	$747 03

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RECAPITULATION.

	Yards.	Sold.	Cost.	Gain.
How Brothers & Co.....	26, 041 sold for	17, 921 20	13, 264 23	4, 656 97
Sweetser, Skilton & Dole.....	803¾ " "	662 92	465 49	197 43
Wilson & Merrill.....	325 " "	178 50	136 53	41 97
Faxon & Elms	8, 125 " "	6, 542 70	4, 622 74	1, 919 96
Sears & Warren.....	3, 272 " "	2, 471 74	1, 784 14	687 60
Richards & Bryant.....	100 " "	88 00	61 69	26 31
Craigen, Page & Co.....	120 " "	100 00	74 09	25 91
Pellin, Snell & Co	100 " "	55 00	40 45	14 55
Stoddard, Lovering & Co.....	2, 880² " "	1, 969 42	1, 488 79	480 63
Laing & McGuiness.....	1, 075 " "	833 75	621 42	212 33
Alex. Strong & Co.....	1, 950 " "	962 34	947 03	215 31
	44, 792½	$31, 785 57	$23, 306 60	$8, 476 97

78 (Omitted.)

	Y'ds.
Nichols & Farnsworth.....	1, 125
E. K. Butler.....	2, 820
W. L. Hitchcock.....	8¼
Calvin How & Co.....	150
	4, 103

79 *Terry Webb.*

ROUSEMIR AND KIMBALL.

Month.	Date.	3½ In.	4 In.	5 In.	5½ In.			Sold.	Cost.
1871.									
Dec.	9	.....	.....	.....	5½	100, *a* 50 c'ts	50 00	.....	.....
"	"	.....	.....	5	.....	275, " 45 "	123 75	.....	.....
							173 75		
						4%	6 95	166 80	.....
"	28	.....	.....	5	.....	150, *a* 45 c'ts	67 50	.....	.....
		.....	.....	.....	5½	50, *a* 50 "	25 00	.....	.....
							92 50		
						4%	3 70	88 80	.....
1872.									.....
Jan'y.	4th.	.....	.....	.....	5½	50, *a* 50 c'ts		25 00	.....
		.....	.....	5	.....	125, *a* 45 c'ts		56 25	.....
		.....	4	.....	.....	50, *a* 37 c'ts		18 50	.....
		3½	.....	.....	.....	50, *a* 35 c'ts		17 50	.....
"	17	.....	.....	.....	5½	125, *a* 50 c'ts		62 50	.....
		.....	.....	5	.....	125, *a* 45 c'ts		56 25	.....
		.....	4	.....	.....	125, *a* 37 c'ts		46 25	.....
		3½	.....	.....	.....	75, *a* 35 c'ts		26 25	.....
"	29	.....	.....	.....	5½	75, *a* 50 c'ts		37 50	.....
		.....	.....	5	.....	100, *a* 45 c'ts		45 00	.....
		.....	4	.....	.....	50, *a* 37 c'ts		18 50	.....
		3½	.....	.....	.....	75, *a* 35 c'ts		26 25	.....
Feb'y.	2	3½	.....	.....	.....	50, *a* 50 c'ts		25 00	.....
		.....	.....	5	.....	50, *a* 45 c'ts		22 50	.....
80 1871.						Yards. Price.			
Feb'y.	2d	.....	4	.....	.....	50, *a* 37 c'ts		18 50	.....
		3½	.....	.....	.....	75, *a* 35 c'ts		26 25	.....
	13	.....	.....	.....	5½	150, *a* 50 c'ts		75 00	.....
		.....	.....	5	.....	25, *a* 45 c'ts		11 25	.....
		.....	4	.....	.....	100, *a* 37 c'ts		37 00	.....
		3½	.....	.....	.....	100, *a* 35 c'ts		35 00	.....
	23	.....	.....	.....	5½	200, *a* 50 c'ts		100 00	.....
		.....	4	.....	.....	100, *a* 37 c'ts		37 00	.....
		3½	.....	.....	.....	100, *a* 35 c'ts		35 00	.....
M'ch.	14	.....	.....	.....	5½	150, *a* 50 c'ts		75 00	.....
		.....	4	.....	.....	100, *a* 37 c'ts		37 00	.....
		3½	.....	.....	.....	100, *a* 35 c'ts		35 00	.....
April.	13	.....	.....	.....	5½	175, *a* 50 c'ts		87 50	.....
		.....	4	.....	.....	75, *a* 37 c'ts		27 75	.....
		3½	.....	.....	.....	100, *a* 35 c'ts		35 00	.....
	27	3½	.....	.....	.....	75, *a* 35 c'ts		26 25	.....
		.....	4	.....	.....	100, *a* 37 c'ts		37 00	.....
		.....	.....	.....	5½	125, *a* 50 c'ts		62 50	.....
May.	11	.....	.....	.....	5½	200, *a* 50 c'ts		100 00	.....
		.....	4	.....	.....	100, *a* 37 c'ts		37 00	.....
		3½	.....	.....	.....	100, *a* 35 c'ts		35 00	.....
81 May	25	.....	.....	.....	5½	175, *a* 50 cts		87 50	.....
		.....	.....	5	.....	100, *a* 45 cts		45 00	.....
		.....	4	.....	.....	25, *a* 37 cts		9 25	.....
		3½	.....	.....	.....	50, *a* 35 cts		17 50	.....
June	18	.....	.....	5	.....	175, *a* 45 cts		78 75	.....
"	"	.....	.....	.....	5½	325, *a* 50 cts		162 50	.....
1872.									
July	2	.....	.....	.....	5½	325, *a* 50		162 50	.....
"		.....	.....	5	.....	125, *a* 45		56 25	.....
	18	.....	.....	.....	5½	250, *a* 50	125 00	.....	.....
"		.....	.....	5	.....	75, *a* 45	33 75	.....	.....
	29	.....	.....	.....	5½	200, *a* 50	100 00	.....	.....
		.....	.....	5	.....	75, *a* 45	35 75	.....	.....
Aug.	10	.....	.....	.....	5½	150, *a* 50	75 00	.....	.....
		.....	.....	5	.....	25, *a* 45	11 25	.....	.....
"	29	.....	.....	.....	5½	450, *a* 50	225 00	.....	.....
		.....	.....	5	.....	175, *a* 45	78 75	.....	.....
Sept.	17	.....	.....	.....	5½	225, *a* 50	112 50	.....	.....
		.....	.....	5	.....	75, *a* 45	33 75	.....	.....
Oct.	3	.....	.....	.....	5½	250, *a* 50	125 00	.....	.....
		.....	.....	5	.....	75, *a* 45	33 75	.....	.....
"	15	.....	.....	.....	5½	175, *a* 50	87 50	.....	.....
82 Oct.	15	.....	.....	5	.....	75, *a* 45	33 75	.....	.....
"	26	.....	.....	.....	5½	350, *a* 50	175 00	.....	.....
		.....	.....	5	.....	125, *a* 45	56 25	.....	.....
Nov.	9	.....	.....	.....	5½	300, *a* 50	150 00	.....	.....
"		.....	.....	5	.....	50, *a* 45	22 50	.....	.....
	21	.....	.....	.....	5½	200, *a* 50	100 00	.....	.....
		.....	.....	5	.....	75, *a* 45	33 75	.....	.....

Terry Webb—Continued.

ROUSEMIR AND KIMBALL—Continued.

Month.	Date.	3½ In.	4 In.	5 In.	5½ In.			Sold.	Cost.
1872.									
Dec.	2	.....	.....	.....	5½	225, *a* 50	112 50	.....	.....
"		.....	.....	5	.....	75, *a* 45	33 75	.....	.....
"	10	.....	.....	5	.....	50, *a* 45	22 50	.....	.....
		.....	.....	.....	5½	200, *a* 50	100 00	.....	.....
							1,915 00		
						4 % off	76 50		
								1,838 40	
								$4,166 50	
1872.									
Dec.	17	.....	.....	5	.....	75, *a* 45 cts.	33 75	.....	.....
"		.....	.....	.....	5½	125, *a* 50 cts.	62 50	.....	.....
"	29	.....	.....	.....	5½	125, *a* 50 cts.	62 50	.....	.....
		.....	.....	5	.....	50, *a* 45 cts.	22 50	.....	.....
1873.									
Jan'y	16	.....	.....	.....	5½	350, *a* 50 cts.	175 00	.....	.....
"		.....	5	.....	.....	100, *a* 45 cts.	45 00	.....	.....
"	22	.....	.....	.....	5½	175, *a* 50 cts	87 50	.....	.....
83 Jan'y	22	.....	.....	5	.....	75, *a* 45 cts.	33 75	.....	.....
	29	.....	.....	5	.....	50, *a* 45 cts.	22 50	.....	.....
		.....	.....	.....	5½	175, *a* 50 cts.	87 50	.....	.....
Feb'y	3	.....	.....	5	.....	25, *a* 45 cts.	11 25	.....	.....
		.....	.....	.....	5½	75, *a* 50 cts.	37 50	.....	.....
"	10	.....	.....	5	.....	75, *a* 45 cts.	33 75	.....	.....
		.....	.....	.....	5½	225, *a* 50 cts.	112 50	.....	.....
"	18	.....	.....	5	.....	50, *a* 45 cts.	.....	22 50	.....
		.....	.....	.....	5½	150, *a* 50 cts.	.....	75 00	.....
"	25	.....	.....	5	.....	50, *a* 45 cts.	22 50	.....	.....
		.....	.....	.....	5½	200, *a* 50 cts.	100 00	.....	.....
M'ch	8	.....	.....	5	.....	75, *a* 45 cts.	33 75	.....	.....
		.....	.....	.....	5½	75, *a* 50 cts.	87 50	.....	.....
"	15	.....	.....	5	.....	100, *a* 45 cts.	45 00	.....	.....
		.....	.....	.....	5½	225, *a* 50 cts.	112 50	.....	.....
				725	2,000	11,950	1,228 75	.....	4,065 86
						4 %	49 15		
								1,179 60	1,377 74 gain.
								$5,443 60	$5,443 60

84	Sold.		Cost.	
3½ in.,	950	3½ in.,	950, cost	$235 46
4 "	875	4 "	875, "	$239 22
5 "	2,925	5 "	2,925, "	$976 14
5½ "	7,200	5½ "	7,200, "	$2,615 04
	11,950 y'ds. sold for $5,443 60.		11,950	4,065 86

ROSS, PEARCE & CO.

Month.	Date.	5 Inches.	5½ Inches.		Sold.	Cost.
1871.				Yards. Price.		
Sep.	23	.....	5½	25, *a* 46 c'ts.	11 50	.....
	5	.....	.....	25, *a* 41 c'ts.	10 25	.....
Oct.	6th	.....	5½	125, *a* 46 c'ts.	57 50	.....
	5	.....	.....	125, *a* 41 c'ts.	51 25	147 04
Dec.	29	5	.....	125, *a* 41 c'ts.	51 25	34 71 gain.
		275	150	425	$181 75	$181 75

I. H. SEARS.

					Sold.	*Cost.*
1871.				*Price.*		
Nov.	27	5	.....	25, *a* 45 c'ts.	11 25	35 65
			5½	75, *a* 50 c'ts.	37 50	13 10 gain.
				100	$48 75	$48 75

89 RECAPITULATION.

	Yards.	Sold.	Cost.	Gain.
Rousemeir & Kimball	11,950 sold for.	$5,443 60	4,065 86	1,377 74
Rose, Pearce, & Co	425 " "	181 75	147 04	34 71
J. H. Sears	100 " "	48 75	35 65	13 10
Nichols & Farnsworth	575 " "	244 25	200 86	43 39
H. L. Daggett & Co	25 " "	11 25	8 42	2 83
New York, Stoddard & L., agents	809 " "	380 71	269 68	111 03
How Brothers	1,641 " "	728 45	552 50	185 95
E. K. Butler	5,147 " "	2,235 87	1,683 39	532 48
Laing & Maginnis	1,650 " "	772 50	571 35	201 15
	22,322	$10,057 13	$7,534 75	
28 % less cost			2,109 73	
			$5,425 02	2,109 73
				$4,632 11
(Omitted.)				
Union elastic web:				
E. K. Butler, 64½	44,792½	31,785 57	23,306 60	8,478 97
Total gain				$13,111 08

90, 91 *Defendants' discharge.—Filed with master Aug.* 4, 1874.

The defendant denies that either of the items charged by the complainant, and numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, is just and true, and alleges and avers that the account presented by the defendants and filed with the master correctly states the several items pretended to be stated by the complainant's charges, and the defendants refer to said account as a part of this statement in reply to said charges.

And these defendants further say and aver—

1. That the whole amount of Union web manufactured by the defendants is 37,900 yards, and not as alleged 44,792½, and these defendants deny the truth of the plaintiff's schedule referred to.

2. That the Union web manufactured by these defendants was manufactured at a cost to these defendants of 27,438.60, and not at a
92 cost of 23,336.60. And these defendants deny the truth of the complainant's schedule referred to.

3. That they sold the Union web manufactured by them for 31,785.57, but avers that they sold said web for 25,065.22.

4. The defendants deny that they should be charged for Union webbing—

D'r—Net receipts	31,785 57
C'r—Cost	23,306 60
Whole profit	$8,478 97

but aver that they should be credited and allowed for the loss upon said manufactures, as follows, namely:

D'r—Net receipts	25,065 22
C'r—Cost	27,438 60
The loss being	2,373 38

5. The defendants deny that they are liable to the plaintiff on account of any Terry web manufactured, but allege and aver that the Terry web manufactured by them was not an infringement of the plaintiff's patent, and deny that the invention of the plaintiff was used in said man-

93 ufacture. They further deny that they have manufactured 22,322 yards of Terry webbing, and deny that they have manufactured more than 22,123½ yards of Terry. The defendants also deny the correctness of the plaintiff's schedule in that regard.

6. The defendants deny that the Terry webbing was manufactured by them at a cost of only 5,425.02, and deny the correctness of the plaintiff's schedule, but aver that said manufacture was at a cost of $9,510.25.

7. The defendants deny that they sold the Terry web manufactured by them for $10,057.13; and aver that the Terry manufactured by them was sold for 8,852.06.

8. The defendants deny that the profits in the manufacture of Terry web is $4,632.11, but allege on the contrary that said manufacture resulted in a loss to them of $658.19.

9. And the defendants deny that they should be charged with, on both Union & Terry as alleged, the sum of $13,111.08, the actual
94 losses on said manufacture being $3,031.57.

And the defendants deny all and singular the items of the schedules annexed to the plaintiff's charge, and aver and allege that the account filed by them is a full, complete, and just and true statement of the losses sustained by them in the manufacture in controversy, except that the Terry webbing was not made in infringement of the plaintiff's patents. And the defendants allege and aver that there were no profits made by them in said manufacture.

BENJ. DEAN,
Att'y for the Defendants.

95 . *Exceptions taken by complainant to the paper entitled "Defendants' discharge."—Filed with master October* 8, 1874.

1. That the defendants nowhere show the whole cost from manufacturing said fabrics in detail, nor produce any evidence showing the items of cost of manufacture of said fabrics from which the cost may be estimated; but, on the contrary, have mutilated the books containing the cost of manufacture of said fabrics, and kept back from complainant a detailed account of cost of materials from which said fabrics were manufactured.

2. That defendants refer in their discharge to their account rendered, which nowhere shows the items of cost of manufacture of said fabrics from which the profits may be estimated.

3. That said account rendered, to which said respondents refer in their so-called discharge, gives no items or details of computation
96 nor any reference to any books by pages, nor to any accounts by dates, so that any computation can be made of the same.

4. That said account rendered, to which said respondents refer in their so-called discharge, refers to a quantity of goods returned, but no evidence or statement is made as to whether or not they were sold again or what became of them, or when they were returned, or how soon after the sale, nor whether they were damaged by keeping, or how otherwise, nor any reference to any books; the vouchers put in evidence, from one to thirteen, by respondents, are not taken from any books of said respondents, and are fraudulent on their face.

5. That said respondents have made fabrics under the process of complainant, but no books delivered to complainant by the respondents show or set forth that such fabrics were ever manufactured or sold.

6. That the respondents have not delivered for the inspection
97, 98 of complainant the book wherein the original numbers were re-

corded, although often requested and called upon to do so; and goods of a different quality and price have been sold by the same numbers, and may be of different fabrics, so that complainant was unable to distinguish between them for the want of the original number held in secret and kept back from inspection by complainant.

7. That said respondents sold goods manufactured by them styled "No mark," nor is there any sample rendered of said goods, nor any evidence (except 2½ inches in width) whereby discovery can be made that said fabrics were manufactured by complainant's process.

By complainant in person.

WILLIAM SMITH.

OCT. 7, 1874.

99 *Reasons for not employing counsel.—Filed with master Oct. 8th, 1874.*

1st. That in matter of accounting now before the said master, by the multiplicity of books, irregularly kept, and the mutilation of some of them, no assistance can be afforded to this complainant by an attorney or counsel in any measure in unravelling them, as it requires a practical and experimental knowledge in weaving and manufacturing the said fabrics infringed upon; also the further knowledge and practical experience of buying raw silk and the manufacture of said silk into tram and organzine and the other branches of silk manufacture, and an intimate knowledge of silk machinery and the practical working of the same; besides the further knowledge of the counts of cotton threads, count of reeds, and divers other matters.

100 2nd. That complainant is an expert in the matters set forth in article 1st, and has had much experience in examining and cross-examining witnesses; and the nature and matter in this accounting now before the aforesaid master is such that no lawyer or counsel can intelligently examine witnesses or the books of the defendants, except he is an expert in all matters and things stated in article 1.

3rd. That complainant is the attorney of record, and has never by word or deed deputed that power to another, or never has deputed that power to any attorney in the case, but could discharge him at any time at his pleasure.

4th. That this complainant never at any time by his word or act excused defendants from not rendering their account by reason of complainant calling for defendants' books, nor were defendants so excused, either in equity so excused, nor did the complainant ever give to his attorney power and authority to conduct the accounting to exclude

101 complainant from interfering in said accounting. Complainant employed a lawyer at the request of said master, but he was found so very incompetent that complainant had to dismiss him.

5th. Complainant claims the right, either in law or equity, to conduct his own case in any court in the United States, even in the Supreme Court itself, and call to his assistance proper attorneys and counsel, as in his judgment he may deem expedient.

6th. The complainant has no funds to employ either attorney or counsel in this accounting.

WILLIAM SMITH,
Complainant.

OCTOBER 7TH, 1874.

Additional claim.—Filed with master Oct. 20, 1874.

I, William Smith, the complainant, make another claim to my
102 previous claim, filed before the master on the 16th day of July, 1874, of $1,800 dollars—$300 on narrow elastic and $500 on glace, or luster web, and $1,000 on silk Terry web.

The above webs are not accounted for in schedule rendered by the company, nor is there sufficient evidence in the books of the company to make out a detailed account, and the defendants refuse to give any account of them, in whole or detail.

WILLIAM SMITH,
Complainant.

OCTOBER 20, 1874.

Additional claim.—Filed with master Nov. 5, 1874.

I, William Smith, make a claim to my previous claims, filed before the master on the 16th day of July, A. D. 1874, and October 20, A. D. 1874, for $1,000, for D. S. cotton Terry web. The cotton Terry web is
103 not accounted for in the schedule rendered to the master by the company, there being not sufficient information in the books of the company to make out any detailed account; and the defendants refuse to give any account of them in detail.

WILLIAM SMITH.

BOSTON, *Nov.* 5, 1874.

On the twelfth day of February, A. D. 1875, the following paper, entitled objections to master's report, was presented to the court, the honorable John Lowell, district judge, sitting, and it was thereupon ordered that the same be filed in the cause, reserving to the defendants the right to object to the same as to all matters of form and substance:

Objections to master's report.—Filed Feb. 12, 1875.

Page 1.—"I have found no profits, &c." According to his own
104 admission in his report there is a profit, and in the defendants' account they charge a penny per yard more on 10,423¼ y'ds of 5½-inch than their pretended cost of the goods, which amounts to $104.23½, and yet he finds nothing to account for, say nothing of the 1½ c'ts for capital stock on more than 60,000 y'ds, which according to his own report would amount to more than $750.

Page 1, sec. 2.—This section is willfully and deliberately untrue. On April 14, 1874, the master made an order that the defendants file their accounting before him. On April 28, 1874, met before the master. The defendants had brought in no accounting, but asked for ten days' further time to put in their account. The master said to me, the complainant, "M'r Smith, if you say so I will arrest the defendants. But they will come before the court and say they had no desire to disobey
105 the court, and no doubt the court will give them further time." I answered I had no wish to arrest them. It was mutually agreed between all parties that they should file their account in ten days, and the defendants and the master took down my address in New York, the master saying to me he would send me a copy of the defendants' account, and that he would give me one week to object to it, and save me the expense of one journey from New York.

I requested at this time that they should produce their books. The reason was this: A lawyer in New York, by name of Livingston Scott 55 Liberty st., New York, had a conversation with a lawyer by the name of Whittier, employed in the office of George Gifford, of New York, who is senior counsel for defendants under the decree, who informed the said Scott that I, the complainant, should never recover a cent from said accounting.

106 Page 2, sec. 3.—Not a word of truth in this section; they produced no books, but asked for ten days' further time as aforesaid; further time under section 2.

Tuesday, May 12, 1874, came from New York to Boston. Defendants brought a few books of the company in a trunk, but no accounting. Here the master took the ground that as I had called for the books of the company I had waived their accounting, &c., which I stoutly denied. On the 13th day of May, 1874, I requested the master to take down the evidence in question and answer, which he refused to do.

May 13, 1874, on the examination of M. H. Leonard, treas., question, Have you made any estimate of cost and profits under the decree? Excluded by the master (saved).

On the 5th day of June, 1874, I made a motion in court that the defendants be compelled to file their account, and his honor the

107 judge said he had ordered an account in the decree, and he could give no further orders until the master had brought in his report, and then he should know what to do with it; and yet the master, as clerk of the court, entered on the record of the court "motion dismissed."

Page 2, sec. 4.—May 1, '74, I made a motion before the master that defendants produce samples of goods manufactured by the company, and the number each sample was known by and sold by in the market, and to what number charged (if any) for the years 1868 to 1874. Although I have frequently urged and demanded the above account of numbers, &c., they have refused to give such an account as demanded.

Page 2, sec. 9.—The master ordered me to bring in my accounting on the 15th day of July, 1874, and I could not get it ready before the 16th, on which day I filed it, and the master asked defendants if they had any objections on that account, and they answered no, and he

108 gave defendants further time to file their discharge, as my account took four days to copy. I did not wish to bring in my account until defendants had accounted for the 13½ cts. per yard of the 15 cents so lately added to the cost of goods, but the master would have it so.

Page 2, sec. 10.—"The master referred Smith to an order entered June 15, 1874." There was no such order entered, nor had I any knowledge of it before October 6, 1874. When the master showed it to me I found it was an order drawn up and signed by himself, and I suspect drawn up since I discharged my lawyer, Sept. 15, 1874. I thought I saw the reason why the master was continually asking and requesting me, after I had employed a lawyer, to leave it all to him and have nothing to do with it myself. I said I had never done such a thing, and never would do so; and this was so often repeated to me that it be-

109 came a nuisance to me, until I told him I was sick of hearing it, and requested him to let me rest about it.

Extent of manufacture.

Page 3, 4.—The whole statement is false, from the evidence and facts in the case. The treasurer says, in his evidence on October 9, 1874,

"I know there was a much larger amount of Terrys sold than appeared."

John H. Buckley's evidence, Oct. 8, 1874.

Ques. 18. Did you ever make any glaced goods with double shuttle?

Ans. Not wholly of glace materials; when we did make any such the glaced covered the rubber and weft-threads; the back of these were not glaced.

Yet there is no account of these goods, nor any mark or sign; they were double-shuttle goods, made under the decree either in the weavers' book or the sales books.

Question 33. Did you ever make cotton Terry when you were there with double shuttle?

Ans. Yes, sir; we did.

110 Here comes the mystery of the mutilation of the cost-book to get rid of the evidence of cotton Terrys, which most probably would be three or four times the amount of glazed or lustre Terrys, as the cotton Terrys are the most used. This is but a small item of what is to come. I would here remark that selling goods by numbers continually varies; that is, the same goods made in different reeds or different count of cotton are called by different numbers, but they have a factory number that does not vary for the same description of goods; for instance, $\frac{800}{[143]}$ $\frac{805}{[143]}$ $\frac{810}{[143]}$ The numbers in brackets are factory numbers, but the 800, 805, 810 are all the same description of goods, but of different qualities. (See letter from company to Laing & Maguinnes, p. 325, July 11, 1871.) $\frac{800}{[143]}$ and other numbers made under the decree, amounting to many thousand yards, they have rendered no ac-

111 count of, and flatly swore they never made any under the decree.

From packing-room book; different numbers that double-shuttle goods were sold by:

Feb. 4, '71, flat back N. Y., 100 y'ds.
Feb. 15, '71, #143, lustre Terry, 125 "
May 1, '71, N. Y. silk Terry, flat-back.
" 26, '71, double shuttle, no amount given.
Aug. 26, '71, #234 (143) no mark, (143) new.
Sept. 8, '71, #1200, flat-back D. S. No amount given.

Nov. 3, '71, (143)	225 50	y'ds.
" 6, '71, #150 (143 S.)	2,350	
Dec. 11, '71, (143)	2,500	
" 16, '71, (143)	125	
" 19, '71, $2,075 (143)	125	
Jan. 23, '72, 308 New York	625	
	6,000	

Here is 6,000 yards, besides those in which no amount is given, sent to one man in New York, a director of the company, and in their account filed before the master there is only 809 yards rendered sold for

112 so much, no price per yard being given, goods never brought in their sales books, even the 809 yards in their account.

This number, 308, the defendants all swore they never made any but a few samples, never sold any. (See E. T. Sawyer's testimony, Oct. 22, 1874, cross 70, "Never made five yards of it.")

Pages 3 & 4.—"The complainant was often requested, &c." Before the examination was closed the master said to me, "There are two items you have entered twice over. I do not blame you for it; you are not to blame when they changed their sales from one book to another; they entered on the book what they changed to, on the 13th of the month what they had entered on the 11th of the month in the book they changed from." I, in fact, had entered twice over these two items because they had done the same; this showed me that the master
113 had been examining the books ex parte with the defendants.

The defendants filed a memorandum in pencil of what they had sold to How Bro's & Co., and when I found sales of goods sold under the decree in pencil, and not in the books, I entered them as sales; also, when I found sales of said goods in the books and not in the pencil memorandum I entered them, which was perfectly proper for me to do, and then I only got a small portion of the goods that were actually made under the decree.

Cost of manufacture, pp. 4 to 9.—I object to the whole of the master's report under this heading as contrary to the evidence and facts. (See Smith's evidence, Oct. 16, 1874, Oct. 17, 1874.)

I request and demand that all the books, letters, papers, samples, and sample-books of the Glendale Elastic Fabrics Company, and all the evidence taken before the master, and all the objections I have
114 made before him. I repeat my objections to all the evidence given by E. T. Sawyer:

1st. Inadmissable, because the master has ruled it out.

2nd. That costs cannot be lumped together as on page 5, but must be stated separately and distinctly.

3d. That evidence is so untrue that no court will receive it.

4th. The evidence states that from January, 1868, to December, 1873, 2,847, 719½ yards were made of Gassett webbing; and say if it was an average of 50 % of all the other kind of goods they manufactured together, at 15 c. per yard it would net them $63,000 per annum, which would cover all expenses, losses, bad debts, &c., and leave them a surplus of over $30,000 per annum.

Page 12.—The master, while taking evidence before him on
115, 116 Sept. 4, 1874, demanded of me my check for $500, saying his charges would be $1,000. I did decline, and do so still.

Finally, I object to the master's report as being full of false, garbled statements, unsupported by the evidence and facts, and I demand all the letters, books, and papers of the company in support of my accounting and in the refutation of the master's report.

And, further, I put on file this my objection to the master's report as a motion to be made in court Feb'y 10, 1874.

117 This cause was thence continued from term to term to the present October term of this court, A. D. 1875, when, to wit, Oct. 21, 1875, the same comes on to be heard before the honorable George F. Shepley, circuit judge, sitting, upon exceptions to the master's report, and is argued by the plaintiff pro se and by counsel for defendants, and thereupon, after due consideration thereof, to wit, Nov. 4, 1875, it is ordered, adjudged, and decreed that the exceptions to the master's report be, and the same are hereby, overruled, and that the master's report be, and the same is hereby, confirmed.

On the eighteenth day of January, A. D. 1876, the report of the clerk of this court upon the bill of costs presented by the complainant is filed as follows, namely:

In re taxation of complainant's costs.—Clerk's report.

Upon the annexed taxation of costs presented on behalf of complainant, the parties have been fully heard before me by James B. Robb, esq., of counsel for complainant, and by Benjamin Dean, esq., of counsel for defendant.

118 Benjamin Dean, esq., objected generally to the amounts of the several items, but did not call specific attention to any item as being in excess of the sum shown by the vouchers and proofs before me to be proper to be considered upon taxing costs in this case. I find, therefore, the several items to correctly represent in amount the matters which they purport to represent.

M'r Dean objected to all items relating to the evidence taken by complainant and contained in the volume entitled Complainant's Proofs, because—

I. It does not appear that any of these depositions were taken and filed in this case.

II. All the said depositions were filed in the southern district of New York and only there, and could not be used in this court except by consent, and the use of a certified copy was for the benefit of complainant, and not objected to by defendants for the purpose of enabling the complainant to present this case for final hearing, and not for the purpose of charging these defendants with any part of the original expense of taking and printing said depositions.

119 III. If complainant is to be allowed anything on account of these depositions it should be only a portion of the $200 said to be paid the clerk of the circuit court of the United States, southern district of New York, for a certified copy of the same.

IV. Inasmuch as the complainant saw fit to take depositions in separate causes entirely diverse in character, some of the evidence being applicable to one class and some to another and different class, it is necessary to examine the record to determine whether any and what portion, if any, of said evidence is applicable to this case, and that nothing should be taxed against this defendant on account of evidence taken not applicable to the issues in this cause.

V. All this evidence was first printed and used in the New York cases. The subsequent use here involved no additional expense.

M'r Dean also objected to any costs being allowed on account of evidence taken over and over again as incompetent.

M'r Dean also claimed that the attorney fee for taking depositions should not be allowed where the complainant acted pro se, as he did in many instances in this case, as shown by the record.

120

M'r Robb claimed that all the items presented in complainant's taxation were properly taxable in full, and that no deduction should be made because the evidence had, by consent of parties, been made available in other causes. This M'r Robb insisted upon, but submitted that if any division was made at least one-half (½) the cost of taking the depositions should be taxed in this cause.

M'r Robb claimed specifically, with regard to the attorney fee of $2.50 for each deposition, that that is a statute fee, and that there is no authority or precedent for apportioning this fee among several causes, but that the full amount should be taxed in this cause, and also claimed an

application of the same principle to each item of taxation presented by complainant.

121 Such objections were taken to my rulings that all the above questions are saved for the consideration of the court.

I find as follows:

It appears that the evidence used in this cause, with the exception of a single deposition, was taken on the part of the complainant in a large number of causes pending in the circuit court of the United States for the southern district of New York and the northern district of Illinois, and in two causes pending in this court, namely, this cause, and cause this complainant v. Nathan Nichols, and on the part of the defendants in said two last-mentioned causes. It does not appear that the witnesses or examiners were paid fees, except for one cause.

As the evidence taken for complainant was properly returnable to each of the three courts in which causes were pending, namely, southern district of New York, northern district of Illinois, and this district,

122 I have considered that one-third the cost of taking these depositions should be assigned to the causes pending in this district, and there being two of these, that one-sixth of the whole cost of taking these depositions should be taxed in this cause. The same principle is applicable to the printing of these depositions, which was done for all the cases in which it might be used.

The evidence for defendants being taken for the two causes pending in this district, and being printed and used in each of these causes, I have considered that one-half the cost of taking the same should be taxed in this cause.

Two hundred dollars were paid for a certified copy of the evidence contained in the book entitled "Complainant's Proofs." It appears that the several examiners made return of all the evidence, and that the same was filed in the circuit court for the southern district of New York, no original or duly certified copy being sent by the examiners to this court. It appears that the defendants required the complainant to procure and file here a certified copy of this evidence, and that they

123 accepted as sufficient the copy certified by the clerk of the circuit court for the southern district of New York at the said cost of $200. This copy was of record in the two causes pending in this court, and I have considered that one-half the expense thereof is properly taxable as costs in this case.

The master's fees in this cause, $628.05, are due me and unpaid. I respectfully request that such order be entered that I may retain my lien for the same, and also for the clerk's fees on disposition of this cause, $48.40, and, subject to this suggestion of non-payment and request, I allow the same as part of complainant's costs.

I annex a schedule showing complainant's costs as allowed by me.

Respectfully submitted.

JOHN G. STETSON, *Clerk.*

124 *Complainant's costs.*

Travel, 3 rules, 3 × 264 =	7.92		
Att. 3 " 3 × 33 =	.99		
Travel, 14 terms, 14 × 264 =	36.96		
Att. 13 " 13 × 33 =	4.92		
May T.,'73, 7 days, 7 × 33 =	2.81		
		$53 10	A.
13 continuances		3 90	B.
Attorney fees on depositions, as follows:			
66 dep's in compl't's proofs.			
2 " pleadings and comp't's proofs			
35 " vol. II, proofs for def'ts		257 50	C.
103 depositions, @ $2.50			
Attorney fee in cause		20 00	D.

Witness fees, as per certificates:

	Miles.	Days att.
No. 1, before White, Stillwell & Shields, travel	503	79
" 2 " W. Grier Hibbler	43	18
" 3 " N. A. Parks	246	38
" 4 " L. P. Waldo	170	4
" 5 " P. B. Stetson	20	6
" 6 " E. T. Brown	1,202	2
" 7 " J. L. High	53	4
	2,237	151
Deduct for examination of self	10	30
	2,227	121

2,227 miles, @ 10 =	222.70		
121 days, @ 150 =	181.50		
		404 20	E.
Examiner's fees:			
Kenneth G. White, &c.	660		
W. Grier Hibbler (say $30 in Smith v. Glendale)	278		
N. A. Parks, 264—25	289		
L. P. Waldo	60		
T. B. Stetson	33.80		
E. T. Brown	10		
James L. High, Chicago ($150 claimed, no voucher, 3 days)	60		
		1,390 80	F.

[125] Printing evidence:

Complainant's proofs, say 852 pp., @ $1.50		1,278 00	G.
Lithographs, 8 pp		40 00	G.
Pleadings and comp't's proofs, 45 pp.... Documentary evidence, vol. I, 179 pp... Depositions and exhibits, vol. II, 341 pp.	565 @ 1.50 =	847 50	H.
Directing record, 1,417 pp., @ 18		255 06	I.
Master's fees (not paid yet)		628 05	J.
Clerk's fees on disposition of cause:			
Fil. in cause	2 20		
Fil. evidences, &c.	6 90		
Fil. relat. to tax.	3		
D. E. in cause	8 40		
D. F	3 00		
Con. at R.	90		
Dec	1 00		
Rec	24 00		
		48 40	K.
Am't paid clerk southern dist. of N. Y. for certified copy of comp't evidence		200 00	L.

126 *Complainant's costs as allowed.*

A, in full		53 10
B, " "		3 90
C, 66 dep's, @ 2.50, $165, of which 1/6 allowed is	27 50	
1 dep. taken in this cause	2 50	
36 deps. taken and used in two causes here, @ 2.50 = 90.	45 00	
		75 00

D, in full		20 00
E, $404.20, of which $\frac{1}{6}$ allowed, is		67 86
F, $30 in this case alone, in full	30 00	
$1,360.80, being balance, of which $\frac{1}{6}$ allowed, is	226 80	
		256 80
G, $1,318.00, of which $\frac{1}{6}$ allowed, is		219 66
H, $847.50 " " $\frac{1}{2}$ " "		423 75
I, 255.06 " " $\frac{1}{2}$ " "		127 53
J, Master's fees allowed, subject to lien, if court so order		628 05
K, Clerk's " " " " " " " " " "		48 40
L, $200, of which $\frac{1}{2}$ allowed, is		100 00
		2,023 55

Add fee for hearing, taxing, and report, as parties may agree.

The foregoing report of the clerk being presented to the court, and the parties having been heard thereon, an indorsement was made thereon by the honorable George F. Shepley, circuit judge, as follows, namely:

127, 128 As there was no motion to strike out irrelevant matter, and as the whole printed record without diminution was used at the hearing, this final taxation by the clerk is approved and confirmed. He will retain the execution until his lien as clerk and master is discharged. Th ecourt stated at the hearing and at the time of delivering the opinion in this case, that a practice like that adopted by the complainant in this case, of putting into the case volumes containing a mass of irrelevant matter, leaving the court to sift the wheat from the chaff, would not hereafter be tolerated. Hereafter, under the head of testimony or exhibits, only such portions will form a part of the record as have some relevancy to the case to be heard. As the whole was put in in this case, and used at the hearing, one-sixth of the whole is properly taxable in this case.

Taxation approved.

G. F. SHEPLEY,
U. S. Circuit Judge.

129 On the nineteenth day of January, A. D. 1876, the following motion to amend decree is filed, namely:

Motion to amend decree.—Filed Jan. 19, 1876.

The defendant respectfully represents that the interlocutory decree in the above-entitled cause was made with costs to the complainant through inadvertence and oversight; and that there was a disclaimer filed after the commencement of the suit, which deprives the plaintiff of the right to costs.

Wherefore they pray that said decree may be modified by striking therefrom so much thereof as relates to costs.

By BENJAMIN DEAN,
Their Attorney.

130 On the twenty-seventh day of January, A. D. 1876, the honorable George F. Shepley, circuit judge, sitting, the following decree is entered, namely:

Decree.—Entered Jan. 27, 1876.

And now, to wit, January 27, 1876, after confirmation of the master's report, and after hearing the parties upon the questions raised in the clerk's report in the matter of taxation of complainants' costs, and the

objections thereto therein stated, and after due consideration of the motion to amend decree filed by defendants, it is ordered, adjudged, and decreed that the said motion to amend decree filed by defendants be overruled; that the clerk's report in the matter of taxation of complainant's costs be approved and confirmed, and, it appearing by said master's report that the defendants have made no profits for which they should account to said complainant, it is further ordered, ad-
131,132 judged, and decreed that the said William Smith, complainant, recover of the said Glendale Elastic Fabrics Company, defendants, his costs of suit, taxed at two thousand twenty-three dollars and fifty-five cents.

By the court.

JOHN G. STETSON, *Clerk.*

Thereupon, to wit, January 27, 1876, the said Glendale Elastic Fabrics Company, by their attorney, in open court, claim an appeal to the Supreme Court of the United States, and afterwards, to wit, February 29, 1876, give good and sufficient security that they will prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good; and said appeal is thereupon allowed by the court.

A true record.

Attest:

JOHN G. STETSON, *Clerk.*

133,134 Know all men by these presents that we, the Glendale Elastic Fabrics Company, a corporation duly established by the laws of Massachusetts, and having its usual place of business at East Hampton, in the district of Massachusetts, as principal, and Horatio G. Knight and Edmund H. Sawyer, of East Hampton, Massachusetts, as sureties, are held and firmly bound unto William Smith, of the city and State of New York, in the full and just sum of three thousand dollars, to be paid to the said William Smith, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the twenty-ninth day of February, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at a circuit court of the United States for the district of Massachusetts, in a suit in equity depending in said court between the said William Smith, complainant, and the said Glendale Elastic Fabrics Company, defendant, decree was rendered against the said Glendale Elastic Fabrics Company, and the said Glendale Elastic Fabrics Company having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said William Smith, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said Glendale Elastic Fabrics Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

GLENDALE ELASTIC FABRICS CO. [SEAL.]
M. H. LEONARD, *Treas.* [L. S.]
HORATIO G. KNIGHT. [L. S.]
EDMUND H. SAWYER. [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. M. JOHNSON.

Approved:

JOHN LOWELL,
U. S. Dist. Judge, Associate Jus. Sup. Court of the U. S.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

135,136 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the pleadings, decrees, etc., in the cause of William Smith, complainant, v. Glendale Elastic Fabrics Company, defendants, in said circuit court determined.

And I further certify that this volume entitled "Vol. I, pleadings, decrees, etc.," and two accompanying volumes having my certificate of even date herewith annexed to each, one entitled "Vol. II, evidence for complainant," and the other entitled "Vol. III, evidence for defendants," together contain a true copy of the record and of all proceedings in said circuit court in said cause.

137 In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] JOHN G. STETSON, *Clerk.*

137½ Circuit court of the United States, district of Massachusetts. In equity.

WILLIAM SMITH, COMPLAINANT,
v.
GLENDALE ELASTIC FABRICS COMPANY, DEFENDANTS.

138 At the hearing of said cause the following evidence was used, namely:

UNITED STATES PATENT OFFICE.

William Smith, of New York, N. Y. Letters patent No. 9653, dated April 5, 1853, extended seven years; reissue No. 2656, dated June 18, 1867; reissue No. 2843, dated January 14, 1868. Division A. Improvements in weaving.

The schedule referred to in these letters patent and making part of the same.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county, and State of New York, weaver, have invented, made, and applied to use certain new

and useful improvements in weaving; and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the annexed drawing, making part of this specification, wherein—

Figure 1 is a sectional elevation of the loom employed by me.

Figure 2 is a front view of the lay, and

Figure 3 is a perspective view, illustrating the mode of weaving the fabric that is formed by this loom.

The like marks designate the same parts.

The object of this invention is to produce, by weaving, a fabric that has a centre warp, enclosed on each side by weft-threads held in place by interlaced warps.

The nature of this division of my said invention consists in
139 the process by which the weaving of such fabric is accomplished.

I will, however, first proceed to describe the loom employed. *a* is the frame of the loom, of any convenient form, carrying the driving-shaft *b*, that is moved by any competent power; *c* are the connecting rods from cranks on the shaft *b*, to the lay *d*, that is supported by and vibrates on a rock shaft, 1. 2 is a warp-roller, kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off, when at the required tension, as now practised. The warp 3 is to be of India-rubber strips, if the fabric is to be corrugated and elastic; or, this warp may be cotton or any fibrous substance where a thick quality of goods is required. This warp passes through the stationary heddle 4, and through the reeds *e* in the lay, over the breast-beam *f*, the fabric as it is formed being wound by any usual means on the roller *g*. 5 is the warp roller, supplying the warp 6 for the two sheds. The warp passes through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling, as hereafter shown. The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends. In the drawing these are shown as connected by straps 9, over a pulley, 10, the straps 11 and 12 being connected from the under side to treadles to be worked by cams from an auxiliary shaft, or by the feet, in the usual manner, when power is not used. The lay itself, in front of the reeds *e*, is shown as formed to receive two shuttles having a centre-piece, 13, with a rib on each edge, an upper piece, 14, and a lower piece, 15, all attached to the body of the lay, so as to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle; and the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged. The shuttles are propelled by means of a frame, *k*, with projections depending from the same, to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame, *l*, and projections. Fig. 1 shows a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys, so
140 that one travels one way, while the other travels in the opposite direction, and by an ordinary picking-motion, if in a power loom, or the usual strap for a hand-loom applied to move either frame, the shuttles are thrown in opposite directions, through the sheds above and below the warp 3.

This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time. Instead of the frames *k* and *l*, racks may be used that in their motion rotate pinion-wheels fixed on the lay, that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other

pinion, thus drawing the shuttle through the shed, even if the motion be not sudden enough to throw the shuttle, or both shuttles may be thrown through the sheds in the same direction at the same time. The two shuttles carry bobbins with filling, as usual, and the loom in working forms a fabric, as shown in large size in Fig. 3. The warps 6 passing up and down through the stationary centre warp 3. The filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the under side. Thus the warp 3 is enclosed, and in weaving India-rubber elastic goods my loom and mode of weaving are especially useful, and have advantages over other looms, for the following reasons, which reasons apply, to a certain extent, to the weaving of other fabrics than India rubber.

First. When a warp of India rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warps and filling interlacing on each side of the rubber cord and forming a woven pocket for the said cord. In this mode of weaving the fabric has ribs produced on its surface, caused by the India rubber, in raising or lowering, embedding itself, leaving the India-rubber thread loose within the woven covering, which is raised on each side; but by my arrangement, the India rubber being stationary, but a slight rib is formed on the surface of the goods, and the rubber is held tightly by the warps, and is not liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber.

141 Second. Where two shuttles have been used with different or the same kinds of filling, one has passed through the shed, and then the India rubber raised up to let the second shuttle pass beneath it. This produces the same imperfections in the goods that are manufactured.

Third. With both the foregoing old methods for weaving elastic goods, the India rubber, being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the India-rubber warp, whereas in my loom the rubber, remaining stationary, is not subject to as much wear.

Fourth. Where but one shuttle is used in weaving elastic fabrics an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

What I claim, and desire to secure by letters patent, is

The process herein specified of weaving, consisting in the use of stationary warps, in combination with moving warps and filling that enclose such stationary warps, substantially as set forth.

In witness whereof I have hereunto set my signature this seventh day of September, A. D. 1867.

WM SMITH.

Witnesses:

CHAS H. SMITH.

GEO. T. PINCKNEY.

142 UNITED STATES PATENT OFFICE.

William Smith, of New York, N. Y. Letters patent No. 9653, dated April 5, 1853, extended seven years; reissue No. 2656, dated June 18, 1867; reissue No. 3,014, dated June 30, 1868. Division B. Improvement in corded elastic fabric.

The schedule referred to in these letters patent and making part of the same.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county, and State of New York, weaver, have invented, made, and applied to use a certain new and useful improvement in woven fabrics; and I do hereby declare the following is a full, clear, and exact description of the same, reference being had to the annexed drawing, making part of this specification, wherein—

Figure 1 is a sectional elevation of the loom employed by me.

Figure 2 is a front view of the lay.

Figure 3 is a perspective view, illustrating the mode of weaving the said improved fabric.

The like marks designate the same parts.

The object of this invention is to produce a fabric that has a centre warp, enclosed above and below by weft-threads held in place by interlaced warps.

143 The nature of this division of my said invention consists in an improvement in the woven fabric itself possessing that character. I will, however, proceed to describe the loom employed, and then point out the features which distinguish my said fabric from others before made.

a is the frame of the loom, of any convenient form, carrying the driving-shaft *b*, that is moved by any competent power.

c are the connecting-rods from cranks on the shaft *b* to the lay *d*, that is supported by and vibrates on a rock-shaft, 1.

2 is a warp-roller, or its equivalent, kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off when at the required tension, as now practised.

The warp 3 is to be of India-rubber strips, if the fabric is to be corrugated and elastic; or this warp may be cotton or any fibrous substance where a thick quality of goods is required. This warp passes through the stationary heddle 4, and through the reeds *e* in the lay, over the breast-beam *f*, the fabric as it is formed being wound by an unusual means on the roller *g*.

5 is the warp-roller, supplying the warp 6 for the sheds. The warp passes through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling, as hereafter shown.

The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends. In the drawing these are shown as connected by straps, 9, over a pulley, 10, the straps 11 and 12 being connected from the under side to treadles, to be worked by cams from an auxiliary shaft, or by the feet, in the usual manner, when power is not used.

The lay itself, in front of the reeds *e*, is shown as formed to receive two shuttles having a centre-piece, 13, with a rib on each edge, an upper piece, 14, and a lower piece, 15, all attached to the body of the lay, so as

to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle; and the length of the shuttle being greater than the width of the reeds, one end
144 enters the groove before the opposite end is disengaged. The shuttles are propelled by means of a frame, *k*, with projections depending from the same, to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame, *l*, and projections.

Fig. 1 shows a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys, so that one travels one way while the other travels in the opposite direction; and by an ordinary picking motion, if in a power loom, or the usual strap for a hand-loom, applied to move either frame, the shuttles are thrown in opposite directions, through the sheds above and below the warp 3. This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time.

Instead of the frames *k* and *l*, racks may be used, that, in their motion, rotate pinion wheels fixed on the lay, that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed, even if the motion be not sudden enough to throw the shuttle, or both shuttles may be thrown through the sheds in the same direction at the same time.

The weft passes across, above and below the centre warps 3 (see fig. 3), and the interlocking of the moving-warps 6 with such weft presses said weft upon the centre warps. In weaving India-rubber elastic goods, my loom and mode of weaving are especially useful, and have advantages over other looms, for the following reasons, which reasons apply to a certain extent to the weaving of other fabrics than India-rubber:

When a warp of India-rubber has been enclosed in a woven fabric it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warps and filling interlocking and forming two complete fabrics, one above and the other below the rubber cords, which fabrics are tied together by binding-warps that interlock between the rubber cords, thus enclosing them in a woven pocket. In this mode of weaving, the fabric has ribs produced on its surface, caused by the India-rubber, in raising or
145 lowering, embedding itself, leaving the India-rubber thread loose within the woven covering, which is raised on each side; but, by my arrangement, the India-rubber being stationary, but a slight rib is formed on the surface of the goods, and the rubber is compressed by the wefts, and is not liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber.

I am aware that prior to my said invention corded fabrics were produced. In some instances, as in Windsor carpets, the cords were introduced as an upper weft on the upper surface of a complete woven cloth as a foundation, the figuring-warps passing from the foundation-cloth over each cord and back to the foundation-cloth. In other instances the cords constituted part of the weft, with thread-wefts interposed, such cords being interwoven with the warp in like manner as the interposed weft-threads, each warp-thread passing under some of the cords and over others, and one warp-thread passing over and the next one under any one of the cord-wefts, and so on across the entire width of the fabric. In others the cords were introduced as part of the warp, and with warp-threads interposed, but in such case the cords were interwoven with the weft-threads just as the interposed warp-threads, that is to say, each weft-thread passed over some of the cords and under others, so

that the pull on the weft-threads would tend to crinkle the cords, and in the woven fabric the only thing which prevented the cords from being crinkled as warp-threads are crinkled in ordinary fabrics was the greater rigidity of the cords.

In other cases, as in the borders of handkerchiefs, cords were introduced at given distances apart, both as warp and as weft, but both being woven in as ordinary warp and weft, as above stated, the crinkling of both sets of cords by the interweaving being prevented only by the fact that the cords were more rigid than the other warp and weft threads; and in other cases the longitudinal cords were separated and enveloped by the intervening of the warp-threads and weft-threads between and around the cords in alternate strips of single and of double cloth, as a single cloth between the cords, and as double cloth to form what
146 may be termed tubes surrounding the cords; and, although there was no tendency in this to crinkle the cords, it was defective for many purposes, because the warp-threads and weft-threads being interwoven into cloth, both above and below the cords, there was nothing to prevent the cords from being pulled or working out of the tubes.

The features which distinguish my improved corded fabric from all others before known are as follows, viz: The cords are longitudinal, and may be termed cord-warps. They are separated from each other by the interweaving of the warp-threads and weft-threads in strips of cloth between the cords only, and not over and under the cords, and the cords are covered on both surfaces by weft-threads only. The weft-threads are not interwoven with the cords, as in the case of corded handkerchiefs, tending to crinkle them, as above stated, but each weft-thread passes either over or under all the cords, instead of passing first under one cord and then over the other, and so on across the fabric, and it is interwoven only between the cords, and only so interwoven with the warp-threads.

The fabric being so constituted at every part of the length, the cords are griped between two weft-threads, one above and the other below, which two weft-threads are drawn each half way around each one of all the cords by being interwoven with the warp-threads in the several spaces between the cords.

In this way the cords are firmly held in the fabric, so that they cannot work out, nor can they be pulled out, while at the same time the binding force by which the weft-threads gripe and hold the cords does not tend to crinkle them.

I am aware that in an old French work on weaving of silk goods, which was printed in 1778, a fabric is described in which certain tie-threads are interwoven in some parts of the fabric in substantially the same way that my elastic cords are interwoven, but nothing of the kind now contemplated by me was then attempted or accomplished.

Protesting, therefore, that this is not a reference sufficient to prevent me from obtaining the patent now sought, but unwilling to consume more time at present in controverting the point made thereon by
147 the Patent Office, I hereby disclaim the purpose of including all kinds of weaving of the kind hereinbefore described, but limit myself to such fabrics when the "cords" are elastic.

What, therefore, I claim as my invention in this subdivision of my patent, is—

The corded fabric, substantially as hereinbefore described, in which the cords are elastic, and are held between the upper and under weft-threads, and separated from each other by the interweaving of the upper

and under weft-threads with the warp-threads in the spaces between the cords, and only there, substantially as above shown.

In witness whereof I have hereunto set my signature this seventh day of September, A. D. 1867.

W'M SMITH.

Witnesses:
CHA'S H. SMITH.
GEO. T. PINCKNEY.

148 The U. S. Patent Office to all persons to whom these presents may come, greeting:

This is to certify that the annexed is a true copy from the records of this office:

In testimony whereof, I, Sam'l S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy, and of Independence of the United States the ninety-fourth.

[SEAL.] SAM'L S. FISHER,
Commissioner.

To the Commissioner of Patents:

Your petitioner, William Smith, of the city and State of New York, represents that letters patent of the United States were granted to him April 5th, 1853, and extended for seven years April 5th, 1867; that said letters patent were reissued June 18th, 1867, and again reissued in three divisions; that he has reason to believe that the specification and claims of division B of said reissue, dated June 30th, 1868, No. 3,014, through inadvertence and mistake, are too broad, including that of which he was not the inventor.

Your petitioner hereby enters the following disclaimer:

I hereby disclaim a fabric in which the warp and weft threads are so interwoven between the elastic cords as to form strips of shirred cloth between and by the contraction of the elastic cords, the warp threads in my improved fabric being only interwoven with the weft threads for the purpose of binding them tightly around the elastic cords.

New York, January 22d, 1870.

WILLIAM SMITH.

Witnesses:
ANDREW J. DE LACY,
W'M H. BISHOP.

Ex'd.—E. M. H.

149 UNITED STATES PATENT OFFICE.

William Smith, of New York, N. Y. Letters patent No. 9653, dated April 5, 1853, extended seven years; reissue, No. 2656, dated June 18, 1867; reissue No. 2844, dated January 14, 1868. Division C. Improvements in weaving.

The schedule referred to in these letters patent and making part of the same.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county, and State of New York, weaver, have invented, made, and applied to use certain new

and useful improvements in looms for weaving; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawing, making part of this specification, wherein—

Figure 1 is a sectional elevation of the said loom.

Figure 2 is a front view of the lay, and

Figure 3 is a perspective view, illustrating the mode of weaving the fabric that is formed by this loom.

The like marks designate the same parts.

The object of this invention is to produce, by weaving, a fabric that has a centre warp, enclosed on each side by weft-threads held in place by interlaced warps.

The nature of this division of my said invention consists in an improvement in looms, whereby I am enabled to introduce a stationary warp, and weave on both sides of it a fabric that firmly encloses it.

150 *a* is the frame of the loom, of any convenient form, carrying the driving-shaft *b*, that is moved by any competent power. *c* are the connecting rods from cranks on the shaft *b* to the lay *d*, that is supported by and vibrates on a rock-shaft, 1. 2 is a warp-roller, kept from turning freely by the friction of a strap, or any usual means, so that the warp 3 is given off, when at the required tension, as now practised. The warp 3 is to be of India-rubber strips, if the fabric is to be corrugated and elastic; or this warp may be cotton or any fibrous substance where a thick quality of goods is required. This warp passes through the stationary heddles 4, and through the reeds *e* in the lay, over the breast-beam *f*, the fabric as it is formed being wound by any usual means on the roller *g*. 5 is the warp-roller, supplying the warp 6 for the two sheds. The warp passes through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling, as hereafter shown. The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends. In the drawing these are shown as connected by straps, 9, over a pully, 10, the straps 11 and 12 being connected from the under side to treadles to be worked by cams from an auxiliary shaft, or by the feet, in the usual manner, when power is not used. The lay itself, in front of the reeds *e*, is shown as formed to receive two shuttles having a centre-piece, 13, with a rib on each edge, an upper piece, 14, and a lower piece, 15, all attached to the body of the lay, so as to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle; and the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged. The shuttles are propelled by means of a frame *k*, with projections depending from the same, to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame, *l*, and projections. Fig. 1 shows a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys, so that one travels one way while the other travels in the opposite direction, and by an ordinary picking-motion if in a power-loom, or

151 the usual strap for a hand-loom, applied to move either frame, the shuttles are thrown in opposite directions, through the sheds above and below the warp 3.

This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time.

I wish it to be distinctly understood that I do not limit myself to the means for moving the shuttles, as instead of the frames *k* and *l* racks

may be used, that in their motion rotate pinion-wheels fixed on the lay, that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed, even if the motion be not sudden enough to throw the shuttle, or both shuttles may be thrown through the sheds in the same direction at the same time. The two shuttles carry bobbins with filling as usual, and the loom in working forms a fabric, as shown in large size in Fig. 3, the warps 6 passing up and down through the stationary centre warp 3. The filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the under side. Thus the warp 3 is enclosed, and in weaving india-rubber elastic goods my loom and mode of weaving are especially useful, and have advantages over other looms, for the following reasons, which reasons apply, to a certain extent, to the weaving of other fabrics than India rubber:

First. When a warp of India rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warp and filling interlacing on each side of the rubber cord, and forming a woven pocket for the said cord. In this mode of weaving, the fabric has ribs produced on its surface, caused by the India rubber, in raising or lowering, embedding itself, leaving the india-rubber thread loose within the woven covering which is raised on each side; but, by my arrangement, the India rubber being stationary, but a slight rib is formed on the surface of the goods, and the rubber is held tightly by the warps, and is not liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber.

152 Second. Where two shuttles have been used with different or the same kinds of filling, one has passed through the shed and then the India rubber raised up to let the second shuttle pass beneath it. This produces the same imperfections in the goods that are manufactured.

Third. With both the foregoing old methods for weaving elastic goods the India rubber, being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the India-rubber warp, whereas in my loom, the rubber remaining stationary, is not subject to so much wear.

Fourth. By using no shuttles, as herein shown, a saving of time is effected, because, under the old method, first one side was formed and then the other of the fabric; my method requiring but about half the time, thereby producing a corresponding saving in cost.

Fifth. Where but one shuttle is used in weaving elastic fabrics, an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

I do not claim two shuttles, as two or more have been used in various kinds of weaving; but,

What I claim, and desire to secure by letters-patent, is

The heddle or its eqivalent, for supporting the stationary central warps, in combination with mechanism, substantially as set forth for performing the weaving.

In witness whereof, I have hereunto set my signature, this seventh day of September, A. D. 1867.

W'M SMITH.

Witnesses:
GEO. DENNETT WALKER.
CHA'S H. SMITH.

153 *Testimony taken under the 67th rule of the Supreme Court of the United States as amended.*

Circuit court of the United States, district of Massachusetts. In equity.

WILLIAM SMITH
v.
GLENDALE ELASTIC FABRICKS COMPANY. } In equity.

JULY 7, 1869.

Present: Cha's F. Blake, esq., on part of complainant, and George Gifford, esq., and Benjamin Dean, esq., on the part of defendants.

MAHLON MULFORD, sworn as a witness on the part of complainant, deposes and says as follows:

Q. 1. What is your name, age, residence and business?

A. My name is Mahlon Mulford; age 53; reside in Elizabeth, N. J.; am a leather and shoe finder.

Q. 2. How long have you been in this business, and how long have you carried it on?

A. About 18 or 19 years, I think, in the city of New York. The first 8 years, about, I was in Pearl street; and since then in Spruce street.

Q. 3. How long have you known W'm Smith, the complainant, and where did you first know him?

A. About 15 years; in New York.

154 Q. 4. State whether or not in 1851 and 1852, M'r Smith came to you and talked to you about his patent, or invention; and whether or not at that time and since down to 1856, you purchased and used his webbing.

A. 1852, I think, is a little sooner than M'r Smith came to me. He came to me and talked about it. I could not say whether it is as long as that I purchased and used his webbing.

Q. 5. State what was said to you just now in a whisper by M'r Hedges.

A. He asked me if it was as early as 1851 and 1852.

Q. 6. State whether or not you have ever received circulars from M'r Smith relating to his webbing and to his patents; and, if so, how many and when.

A. I have received circulars, but how many or when I cannot tell.

Q. 7. State whether or not within the last 2 years you have been waited upon by M'r Smith and M'r Ferguson, in regard to M'r Smith's patents; and, if so, how often.

(Objected to as immaterial.)

A. I have been waited upon, but how often I cannot say, within that time.

Q. 8. State whether or not within a month or two before M'r Smith's suits were commenced, you were so waited on by M'r Smith and M'r Ferguson.

A. I don't remember; it might have been so. M'r Smith has been in.

Q. 9. State whether or not you have at any time received circulars from the Glendale Company, or any other parties, in regard to the defence of these suits, and how many such circulars you have received and when.

(Objected to as immaterial.)

A. I have received such circulars from different parties, but how many or from whom I can't tell, but very probably from that company.

Q. 10. From how many different parties have you received them?

155 A. I can't tell.

Q. 11. Were there circulars from other parties besides the Glendale Company?

A. I don't know. I am not positive; there may have been.

Q. 12. State whether or not you have visited, or seen, or conversed with persons in the trade in regard to the defence of these suits, and whether or not you have advised or asked persons in the trade to join in the defence of these suits, or in an opposition to M'r Smith's patents; and, if so, how many were such persons, and who?

(Objected to as immaterial.)

A. I have not visited them, but persons have been in my store and talked about it. I have advised them to have the thing tested, but how many I can't say.

Q. 13. When you were in other people's stores, did you or did you not talk about it and so advise them?

A. I don't remember ever doing so; I may have done it.

Q. 14. State whether or not you aided, or gave counsel for, or advised others to aid in opposing any former suits brought under M'r Smith's patents, or in opposing his application for a reissue before the Patent Office.

A. I knew nothing about the reissue of his patent until very recently. I aided in opposing his suit.

Q. 15. State whether or not there has been a subscription in the trade to oppose M'r Smith's patents.

A. I think there has.

Q. 16. Who are the subscribers?

A. I don't know; but I think I am one of them; who the others are, I don't know.

Q. 17. How often have you subscribed; when, and how much each time?

A. Once was the only time I subscribed; how much, I don't know.

Q. 18. How long ago was it?

A. I don't remember.

156 Q. 19. Was it three years ago?

A. I could not tell you.

Q. 20. Was it before or after the commencement of these suits?

A. I don't know.

Q. 21. Was it more or less than three years ago?

A. I cannot tell; it was about that time.

Q. 22. Was it more or less than a thousand dollars?

A. It was less than a thousand dollars; I think it was not more than a hundred; I can't tell the amount.

Q. 23. Have you promised to pay further sums to oppose these patents? If so, how much?

A. I promised to pay other sums, but no amount.

Q. 24. At whose request did you subscribe and promise to pay further sums?

A. I don't remember, sir, who it was; but it was some one in the trade.

Q. 25. To whom are you to pay the further sums you have promised?

A. We are all interested in it; I can't tell to whom I have to pay them.

Q. 26. Who do you mean by "we all"?

A. All the witnesses present, and those in the trade.

Q. 27. About how many persons have thus combined to oppose M'r Smith's patents?

A. I don't know.

Q. 28. About how many do you know of as parties to the combination?

A. I couldn't say, except the five gentlemen here.

Q. 29. When you subscribed, did you sign a subscription paper?

A. I am not positive about that; I think I did.

Q. 30. Have you seen that subscription paper since?

A. I have not.

Q. 31. Who is the treasurer of the organization to oppose these patents?

A. I don't know.

Q. 32. Who did you pay the money to?

A. I don't know; didn't think much about it; I wanted the matter tested.

157 Q. 33. Do you mean that you didn't know who he was when you paid it?

A. My partner attended to that part of the business; he may know, but is out of town.

Q. 34. What is your partner's full name, and when will he be back?

A. Benjamin H. Cary; he will be back in a fortnight.

Q. 35. Is this payment entered in your books?

A. I don't know; it is probable it is.

Q. 36. Will you ascertain from your books the date and amount of all your payments to oppose M'r Smith's patents, and the names of those to whom you paid them?

A. I will, so far as I can.

(Counsel for complainant notifies the witness to attend to morrow morning, at this place, at 10 o'clock, to state the result of the examination of his books.)

Cross examination postponed until direct is concluded.

JULY 8TH, 1869—10 o'clock a. m.

Present, M'r Blake for complainant, M'r Dean for defendants.

MAHLON MULFORD, being further examined, testifies as follows:

Q. 37. Q'estion 36 repeated.

A. I paid fifty dollars January 2, 1868; to whom, I don't know.

Q. 38. Did you ever receive any money to resist M'r Smith's patents?

A. Not to my knowledge.

Cross-examination of this witness waived.

MAHLON MULFORD.

Subscribed and sworn to before me this 8th day of July, 1869.

JOHN A. SHIELDS, *Examiner.*

158 AARON CLAFLIN, being duly sworn as a witness on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation or business?

A. Aaron Claflin, aged 62; reside in Brooklyn, of New York; am a dealer in boots, shoes, and leather.

Q. 2. How long have you been in this business?

A. In New York, from 1844 to 1851, seven years; and from 1855 to the present time.

Q. 3. When did you first hear of M'r Smith's patents from him?

A. I should think about two years and a half ago; that is the first I ever heard of them; it was when I was sued.

Q. 4. Are you now one of the combination to oppose M'r Smith's patents?

A. No, sir; I haven't combined with anybody; there is no combination that I know of.

Q. 5. Have you ever subscribed to oppose M'r Smith's patents, or to defend suits brought upon them; or to oppose any application of his before the Patent Office?

A. I never subscribed that I know of. Charles Warren called on me and said he wanted twenty-five dollars to defend suits brought against me and others. I was sued; I told the bookkeeper to give him $25, and to fight it; that I had no time to attend to it. After a few months, I don't know exactly how long, he came in and returned a part of the money—I think about $13.

Q. 6. Have you paid nothing since?

A. No, sir, nothing.

Q. 7. When was it that M'r Warren came to see you?

A. About 2 years ago, I should say, when I was sued.

Q. 8. Did you know at the time that M'r Smith was applying for a reissue of his patent?

A. I did not; I had no conversation on the subject with any one but M'r Smith.

Q. 9. Do you know who opposed the application at the Patent Office?

A. No, sir; I do not; never heard anything said about it; didn't know it was opposed.

159 Q. 10. Before you were sued, did you, or not, receive circulars from M'r Smith in regard to his patents?

A. I have no recollection of it.

Q. 11. Did not M'r Smith or M'r Ferguson, or both, call on you in regard to his patents or to your taking a license under them?

A. I have no recollection of M'r Smith's calling on me; I don't know such a person as M'r Ferguson; I recollect, now M'r Smith speaks of it, of his coming into my place and wanted me to take a license, or use his stamp on the goring; he said I need not pay anything unless others paid; I said I was willing to do what was right, if he had a valid patent, but I could not use his stamp, because people did not make it with the stamp.

Q. 12. How many branches has your house?

A. I have a sort of a branch at Richmond, Virginia.

Q. 13. Did you ever receive any circulars from the Glendale Company or others, in regard to opposing M'r Smith's patents; and, if so, how many and when?

A. I received one circular some four or five months ago from the Glendale Company.

Cross-examination waived.

AARON CLAFLIN.

Subscribed and sworn to before me this 7th day of July, 1869.

JOHN A. SHIELDS,
Examiner, &c.

JOHN ARMSTRONG, being duly sworn as a witness on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Armstrong; am about 47 years old; reside at 115 Madison avenue, New York City, and am in the leather and shoe findings business.

Q. 2. You are a licensee under M'r Smith's patents, are you not?

160 A. I believe the firm of M. Armstrong & Sons, of which I am a member, are; I am not sure; I don't know really what the paper contains.

Q. 3. You have bought stamps from M'r Smith and paid for them under that agreement, have you not?

A. Our firm has.

Q. 4. Have you received any circulars from the Glendale Company inviting your firm to join a combination to oppose M'r Smith's patents; and, if yea, when and how many?

(The further examination of this witness is adjourned until further notice.)

SIMEON SIMMONS, being duly sworn as a witness on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation or business?

A. Simeon Simmons; aged about 43 years; residence, 128 W. 12th st., N. Y. City; my present business is morocco and sheepskin manufacturer and dealer.

Q. 2. How long have you been in this business?

A. Over six years.

Q. What was your business before you went into your present business?

A. Leather and shoe findings.

Q. 4. Have you ever received circulars from M'r Smith in regard to his patents; if yea, how many and when?

A. I can't tell how many, but have received one or more.

Q. 5. Have you received circulars from the Glendale Company or any other persons, inviting you to join in an opposition to M'r Smith's patents; and, if yea, how many and when?

A. I have no recollection of receiving any circulars of that kind, not to oppose M'r Smith's patents.

Q. 6. What kind of circulars did you receive from the Glendale Company?

161 A. I have no recollection of having received any circulars from the Glendale Company. We of the trade were invited to join and defend against M'r Smith's suits.

Q. 7. When was this?

A. I should say it was within three years.

Q. 8. Did you or your firm subscribe any money for this purpose?

A. We did not subscribe, to my recollection, but we did pay something, how much I cannot tell; it was our share.

Q. 9. Were you asked to subscribe by any one; and, if yea, by whom?

A. We were asked to go in with the trade and defend this suit togeth er, but who it was, who asked or invited us to join, I cannot say; it was some member of the trade.

Q. 10. Were you asked to defend this suit three years ago?

A. Not this suit.

Q. 11. How many other persons paid beside yourself?
A. I don't know.
Q. 12. Did you know at the time how many persons paid?
A. No, sir.
Q. 13. How, then, do you know that you paid your share?
A. I don't know, but suppose we did; I don't think they would let us off short of our share.
Q. 14. To whom did you pay this money?
A. I can't tell; some person who called for it.
Q. 15. Did you ever see a list of those paying money or subscribing?
A. I think I never did.
Q. 16. How many persons in the trade have combined?
A. I suppose the trade generally; how many persons there are I can't tell.
Q. 17. Who acts for this combination?
A. I don't know as there is any one party who acts for it.
Q. 18. Name all the persons who belong to this combination known to you?

162 A. In the first place, Mulford, Cary & Conklin; Gillespie, Studwell & Co.; I think, Neil McCallum; and there is, I think, Weller & Miller; Shattuck & Wyckoff; and there is, I presume, others that I cannot name, but those named I have heard speak of the matter.

Q. 19. Is the Glendale Co. a party to the combination?
A. I think they are, or some one who represents that company.
Q. 20. Are Stoddard & Lovering a party to this combination?
A. I believe they are.
Q. 21. How much has been raised by this combination?
A. I have no means of knowing.
Q. 22. Did not Stoddard & Lovering ask your house to buy the webbing of the Glendale Company?
A. I presume they have offered us goods of various kinds.
Q. 23. Did M'r Smith or M'r Ferguson call upon you prior to commencing suits, and ask you to submit to his patents?
A. M'r Smith has called, and I think also a tall man, either with M'r Smith or alone.

And being cross examined by counsel for defendants, he testifies as follows:

Cross-q. 24. Did you pay the money you have stated you paid, because of a belief that M'r Smith was not the inventor of the fabric he claimed to have invented, and because you desired to have the legality of his claims tested before you submitted to his demands?
(Objected to as incompetent.)
A. Yes.
Cross-q. 25. Was that the only reason?
(The same objection.)
A. Yes.

SIMEON SIMMONS.

Subscribed and sworn to before me this 7th July, 1869.
JOHN A. SHIELDS,
Examiner, &c.

163 JAMES E. HEDGES, being duly sworn as a witness on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation, or business?

A. James E. Hedges; 45 years old; reside at 113 Leroy st., New York City; my business boots and shoes.

Q. 2. How long have you been in this business?

A. Since 1856.

Q. 3. Did you at any time receive circulars from M'r Smith calling upon you to submit to his patents?

A. We did about two years ago receive, I think, one or two.

Q. 4. Have you received any since from M'r Smith?

A. Not to my knowledge.

Q. 5. Did not M'r Smith or M'r Ferguson call upon you?

A. They did.

Q. 6. State whether or not you came to a substantial agreement with M'r Smith in regard to a license to be taken by you.

A. We did not come to a substantial agreement; our junior partner, M'r Lane, had an article all written out after having a long talk with M'r Ferguson, but when it was shown to me and my other partner, we said decidedly no.

Q. 7. Did you ever receive a circular or circulars from the Glendale Co., inviting you to join a combination to resist M'r Smith's patents; and, if so, when?

A. We have never been invited to join such a combination; never paid any money to such a combination, and never heard of it until to-day in this room.

Q. 8. Did you ever receive a circular from the Glendale Co.; and, if so, what was its tenor?

A. We received a printed circular, but I can't tell what its contents were.

Q. 9. Was this just before you determined not to sign the license arranged between M'r Ferguson and M'r Lane?

A. About a year afterwards.

Q. 10. Were you ever asked to subscribe or pay money to de-
164 fend any suits brought under M'r Smith's patents, or to oppose any application of his before the Patent Office?

A. We have paid money to defend suits, but not to oppose any application before the Patent Office.

Q. 11. When and to whom did you pay this money, and how much was it?

A. I can't tell the time when; we paid it to C. C. Warren; it was less than $25, our portion was, I think.

Q. 12. Have you promised to pay further sums; and, if so, to whom?

A. We have not, nor have we been asked to.

And being cross-examined by counsel for defendants, he testifies as follows:

Cross-q. 13. Do you, or have you ever believed that M'r Smith was the original inventor of the fabric he claims to have invented?

(Objected to.)

A. I have no means of knowing whatever.

Cross-q. 14. Did you pay the money you paid with the desire of having the validity of his claims tested before you submitted to them?

(Objected to as leading and incompetent.)

A. I presume we did; that that was the object of it.

JAMES E. HEDGES.

Subscribed and sworn to before me this 7th day of July, 1869.

JOHN A. SHIELDS,
Examiner, &c.

WARREN S. SHATTUCK, being duly sworn as a witness on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation, or business?

A. Warren S. Shattuck; am 36 years old; reside in Brooklyn,
165 N. Y.; am in the business of shoe manufacturers' goods.

Q. 2. How long have you been in this business, and where?

A. For the last four years in New York, and previous to that I was engaged in the India-rubber business.

Q. 3. Have you ever received any circulars from M'r Smith requiring you to submit to his patents; and, if so, how many and when?

A. I think I received one or two, but I considered them of so little importance that I threw them away; it was within a few years.

Q. 4. Did M'r Smith or M'r Ferguson ever call upon you and require you to submit to his patents; and, if so, when?

A. M'r Ferguson I don't know. M'r Smith may have called. I did not see him.

Q. 5. State whether or not you ever contributed, or have promised to contribute any money to resist M'r Smith's patents, or any application of his before the Patent-Office; and, if yea, how much and when?

A. I paid about fifty dollars to help defend a customer of mine against an alleged claim by one Smith. That suit was settled by being withdrawn by M'r Smith; and being a defendant, I have promised to pay my share of the expenses of testing the question.

Q. 6. To whom did you pay this money and make this promise, and when?

A. The defendants in this suit, I suppose. They were Mulford, Cary & Conklin, Weller & Miller, Simmons, Rutter & Co., Neil McCallum. These are all I can think of. I don't remember when it was. I don't know to whom or when I made the promise to pay.

Q. 7. To which of the persons or firms named in the last answer did you pay the $50, and at whose request did you pay it?

A. I paid to M'r Edward W. Dean on behalf the defendant at his request.

Q. 8. What is the business and residence of M'r Edward W. Dean, and what were they when he made this request?

166 A. He was and is a partner in the house of Stoddard, Lovering & Co.

Q. 9. What did he say to you when he made this request?

A. I have no recollection.

Q. 10. Did you sign any subscription paper when you promised to contribute?

A. I did on behalf of the defendants.

Q. 11. Who handed you this subscription paper?

A. I cannot say; it was one of the defendants. I think it was Mulford, Cary and Conklin.

Q. 12. How many names were on that paper when you signed it? and give the names.

A. The defendants before mentioned. I wish to add to those names the name of Gillespie, Studwell & Co. There were other names, but I can't recollect them.

Q. 13. On what sort of paper were the subscriptions written and on what sheet did you sign?

A. I have no recollection in either case.

Q. 14. Did you take any part in or contribute to the opposition to the reissue of M'r Smith's patents; and, if so, what?

A. Nothing more than I have already stated.

Q. 15. Who were associated with you in this opposition?
A. The defendants above named and others.

And being cross-examined by counsel for defendants, he testifies as follows:

Cross q. 16. Have you ever believed M'r Smith to be the inventor of the fabric he claims to have invented?
(Objected to as incompetent.)
A. I have dealt in his fabric since 1854, and from that time up, and have never considered M'r Smith owner nor inventor of this material.

Cross-q. 17. State whether all you have done has been done with
167 the belief expressed in your last answer, and with the determination not to submit to what you believe to be an unjust claim until it should be fully tested.
(Objected to as leading and incompetent.)
A. Yes, with full belief.

W. S. SHATTUCK.

Subscribed and sworn to before me this 7th day of July, 1869.
JOHN A. SHIELDS,
Examiner.

NEIL MCCALLUM, being duly sworn as a witness on the part of complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?
A. Neil McCallum; 24 years of age; reside at 508 W. 47th street, New York City; am a dealer in shoe manufacturers' goods.
Q. 2. Have you ever contributed any money or promised to contribute any, to resist M'r Smith's patents, either before the courts or the Patent Office; and, if yea, when and how much?
A. I belong to an association to test the legality of M'r Smith's patents, and have paid $50 as my share; I don't knew whether it was to be done in the courts or before the Patent Office. It was from 9 to 12 months ago to the best of my knowledge.
Q. 3. When was this association formed and of how many members does it consist?
A. I don't know.
Q. 4. Who requested you to join it?
A. How, Brothers & Co., of Boston.
Q. 5. What was stated to you when they asked you to join them?
A. I don't remember.

Q. 6. To whom did you pay this money?
168 A. I paid it to Edward W. Dean, of the firm of Stoddard, Lovering & Co.

NEIL MCCALLUM.

Subscribed and sworn to before me this 7th day of July, 1869.
JOHN A. SHIELDS,
Examiner, &c.

Examination adjourned to Thursday, July 8th, 1869, at 10 o'clock a. m.

THURSDAY, *July* 8, 1869—10 o'clock a. m.

Present: Counsel as before.

CHARLES C. WARREN, being duly sworn as a witness, on the part of the complainant, testifies as follows:

Q. 1. What is your name, age, residence, and occupation, or business?

A. Charles C. Warren; my age is 49; reside in Brooklyn, N. Y.; am an auctioneer and commission merchant in boots and shoes.

Q. 2. How long have you been in this business, and where have you carried it on?

A. Between seven and eight years, and in the city of New York.

Q. 3. Have you at any time paid any money to oppose the patents of M'r Smith, either in the courts or in the Patent Office; and, if yea, how much and when?

A. I paid money to defend suit brought against me and others by M'r Smith, about twelve or fifteen dollars. That suit was some 2 or 3 years ago; and this sum is all I ever paid. This suit terminated in favor of myself and the others.

Q. 4. Who were the others?

A. I do not now remember all of them; so far as I remember, Hedges & Powers, C. S. Parsons, Aaron Claflin, I believe, and perhaps three or four more.

169 Q. 5. Did you collect or solicit the money from the others?

A. I received money from some of them.

Q. 6. Did you collect money from any parties who were not sued; and if so, from whom, and how much?

A. It is possible that parties not sued might have paid me some money.

Q. 7. Have you any doubt that they did?

A. I cannot say that I have.

Q. 8. How much did you receive from such persons, and each of them?

A. It is quite impossible to state accurately; there might have been two or three hundred dollars, more or less, in amounts of perhaps fifteen to twenty-five dollars, but cannot say definitely.

Q. 9. Have you the subscription list, and will you produce it?

A. I had a memorandum, but do not know where it is now.

Q. 10. Have you promised to pay further sums to resist M'r Smith's patents; and, if so, whom did you promise, and how much are you to pay?

A. I have paid nothing; nor have I promised to pay anything, except as above stated.

Q. 11. Have you solicited others to pay further sums except as above stated?

A. I have not.

Q. 12. Have you advised persons in the trade not to take licenses under M'r Smith's patents?

(Counsel for defendants objects to this entire line of examination as being immaterial and incompetent.)

A. I have given no person any advice whatever on the subject.

Q. 13. Is there a combination in the shoe trade to resist M'r Smith's patents, or to defend suits brought by him?

A. I am not aware of any such combination.

Q. 14. Did you see Messrs. Daggett, Nichols and How
170 Brothers, within the past few days; and, if so, what passed between you?

A. I have not seen either of them for two months or more.

Q. 15. By whom are the suits now brought by M'r Smith, under his patents, in various parts of the country defended, and at whose cost and charge?

A. I am informed by M'r Gifford as to New York, but as to whose cost and charge I have no knowledge whatever.

Q. 16. At whose cost and charge is the suit against yourself defended?

A. I do not know, but I suppose at my own cost and charge.

Q. 17. Have you paid any one to defend it, or has any one sent you a bill for defending it?

A. Not as to the suit now pending.

Q. 18. Have you requested any one to defend it?

A. I handed the subpœna or summons to a young man in charge at the office of M'r Geo. Gifford.

Q. 19. Who paid M'r Gifford's retainer?

A. I have no knowledge whatever on that subject.

Q. 20. Is not your suit defended by an association in the trade, formed to defend suits brought upon M'r Smith's patent?

A. As before answered, I have no knowledge of any combination to resist M'r Smith's patents.

CHARLES C. WARREN.

Subscribed and sworn to before me this 8th day of July, 1869.

JOHN A. SHIELDS,
Examiner, &c.

Examination adjourned for new notice.

171 12 JULY, 1869.

JOSEPH S. LOVERING, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Cha's F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Joseph S. Lovering; age, 60 years; residence, Boston, Massachusetts; occupation, merchant, importer of foreign merchandise.

2. Have you ever been interested in the manufacture, importation or sale of elastic webs?

A. Yes, sir; that is, I have been a stockholder in a company which manufacture them—the Glendale Elastic Fabrics Company.

3. How long have you been a stockholder in that company?

A. Ever since its creation. I think about two years ago.

4. Were you ever concerned either as a stockholder or otherwise in the manufacture or sale of elastic webs before you became a member of the Glendale Co., and how?

A. I have, by importing them, and also as stockholder in two companies that preceded the Glendale Co., viz: the Goodyear Elastic Fabrics Co., and the Glendale Vulcanite Rubber Co. The Goodyear Elastic Fabrics Co. began to manufacture elastic fabrics about 1860. The Glendale Vulcanite Rubber Co. followed soon after; I don't remember the date.

5. Were you ever an officer of the Goodyear Elastic Fabrics Co.; and if so, what office did you hold and how long?

A. I was the treasurer of it for about two and a half years.

6. For how long a period have you been engaged in selling elastic web?

A. For fifteen or sixteen years, I should think.

7. Will you state the names of your present partners in business?

172 A. Charles Stoddard, John L. Barry, and Edward W. Dean. The firm name is Stoddard, Lovering & Co.

8. Have you any branch house; if so, where and by what name are they known?

A. One in Manchester, England, by the same firm name.

9. Have you any agencies; if so, where?

A. None.

10. Through whom do you sell your goods in New York, if through any party?

A. Through our house in New York.

11. Is your partner Edward W. Dean in charge of the New York house?

A. Yes, sir.

12. Did you ever see the looms at Easthampton belonging to the Goodyear Elastic Fabrics Co., or the Glendale Co.? and if so, please describe how they work.

A. That would be impossible. I don't know how they work.

13. Were there any double-shuttle looms, and what was the fabric they produced?

A. There were; they produced elastic webs.

14. Describe how these elastic webs were faced.

A. Some of them were all cotton, some silk one side and cotton the other, and some silk on both sides.

15. Has your house the agency for selling the Glendale Company's goods in New York or elsewhere?

A. Of only a portion. Most of the products of this company except gusset webs.

16. Have you never sold the gusset web, and when did you cease to do so?

A. Yes, sir; and we still sell it.

17. How long since the Glendale Co. began to sell the gusset web for itself?

A. About a year.

18. Had you the agency for its sale previously?

A. Yes, sir.

19. Do you know M'r Smith, the complainant, and how long have you known him?

A. I do; I have known him for about nine years.

173 20. Has he ever called on your firm to pay royalties under his patents, and when first, and how often?

A. He has called upon me personally to do so. When I first made his acquaintance, and frequently down to the present time. I should say we have had no claim of royalty, except by printed circulars.

21. Have you or your firm ever contributed or paid any money, or promised to contribute or pay any, to resist or oppose M'r Smith's patents or his claims thereunder; and if so, when first?

A. No, sir; we have never paid nor promised.

22. Has the Glendale Co.?

A. That I don't know.

23. Did it not while you were treasurer?

A. Not to my recollection.

24. Are you sure that the books of Stoddard, Lovering & Co. do not show payments for this purpose?

(This line of inquiry objected to as incompetent and immaterial.)

A. Not so far as I can recollect; I am confident that they have not.

25. Have you ever consulted with any persons or the representatives of any companies in regard to opposing M'r Smith's patents; if so, when and with whom?

A. I have, with several parties and representatives of companies since he presented his pretensions—the date of which I can't fix; I have consulted with almost all the trade.

26. Name especially the parties with whom you have most consulted and down to how late a period?

A. With none more particularly than with others down to this present moment.

27. Have you consulted with Messrs. Nichols and Daggett; if so, when first?

A. The word consulted is more forcible than what I have had to do with them. I have conversed with them.

174 28. What has been the substance of these consultations or conversations?

A. The claim of M'r Smith.

29. What has been the substance of what has been said in those conversations regarding the claims of M'r Smith?

A. That they were untenable.

30. Is that all that you recall?

A. That was the substance of it.

31. Question 29th repeated.

A. Yes.

32. Has nothing been said in regard to resisting those claims; and if so, what?

A. There has; as to resisting them legally.

33. What was said about resisting them legally?

A. It was thought best, as M'r Smith had made these claims for several successive years, to test them legally.

34. When was this conclusion arrived at as near as you can say?

A. I cannot say.

35. Was it when M'r Smith had first presented his claims under his patents to the trade?

A. I cannot say.

36. Was it seven years ago?

A. I cannot say; I shouldn't suppose it was so long ago as that. I don't know.

37. Was it six years ago?

A. I can't say really.

38. Was it within six months?

A. I don't know; I haven't had anything to do with it. I should think the conclusion was arrived at within a year.

39. Was there not opposition to M'r Smith's patents on the part of the trade two years or more ago, and under what form was that opposition carried on?

A. There was opposition to some patent that he had, but that was amended, or he got out a new patent. I have had nothing to do with this last matter.

40. Was not the patent which was opposed a patent for elastic webs?

175 A. It was a patent for a loom on which they were made.

41. What was done by the trade, or any one else, to oppose that patent?

A. The Glendale Elastic Fabrics Company employed counsel; I don't know about the trade. They employed counsel to defeat it, and it was defeated. E. N. Dickerson was their counsel.

42. Were not Brown and Beadle, of Washington, also employed by that company?

A. I think one of that firm was. I don't remember which.

43. Who had charge of this opposition on the part of the Glendale Company?

A. There were several. M'r E. Thomas Sawyer was, I think, the most prominent—a brother of his also. It was not conducted here in Boston. It was all done in New York, and I don't know much about it.

44. Did other parties join in this opposition or contribute to its expense; if so, who?

(The additional objection is made to this interrogatory that it relates to a patent that has ceased to exist, and is not now in controversy.)

A. They did; the names are principally in New York, and I don't know them.

45. Do you know what was done by those parties in opposition to M'r Smith's claims?

A. They resisted them legally, and it was decided (as I understood) at Washington that his claims were untenable.

46. What officer of the Glendale Company acted for the company in opposing the patent?

A. E. T. Sawyer, the agent of the company.

47. What did E. H. Sawyer have to do with it?

A. I cannot tell.

48. Is not the Glendale Company now opposing M'r Smith's claims under these patents?

A. I think so. I understand they have been sued, and are defending.

176 49. Have you ever advised parties in the trade not to yield to M'r Smith's claims under his patents, and, if so, for how long a period have you been in the habit of doing so?

A. I have advised them to resist; the advice has been chronic.

Adjour'ed to 2 o'clock p. m.

2 p. m. resumed.

In answer to cross-interrogatories propounded to him by Benj. Dean, esq., of counsel for respondents:

Cross 1. When M'r Smith called upon you with reference to his patent, what did he claim his invention to be for?

(Objected to as incompetent.)

A. At first and until his last issue his conversation bore entirely upon the superiority of his loom for weaving silk face and cotton-back elastic fabrics, as I understood it. Since the last issue he claims the product of that loom, as I understood it.

Cross 2. By the product since the last issue, do you mean the fabric itself, said fabric having a silk face and cotton back?

A. I do.

Cross 3. Did M'r Smith, in any of his conversations with you, claim to have invented anything more than either a loom that could weave one material on one side of the fabric and another material on the other side of the fabric, or the fabric itself so woven?

(Objected to as incompetent.)

A. He never claimed the fabric until after the last issue. What he claimed was that by the loom he had invented a larger quantity
177 of the fabric could be produced and in a more economical manner. After the last issue, he claimed to have invented the web itself, as I understood him.

Cross 4. What kind of web did he claim to have invented after the last issue?

(Objected to as before.)

A. Gusset web for shoes.

Cross 5. What kind of gusset web; was it a web with silk face and cotton back?

(Objected to as leading and incompetent.)

A. Yes.

Cross 6. When he called upon you, personally, before the last issue of his patent, did he claim a royalty for the use of the loom by the Goodyear Elastic Fabrics Company or the Glendale Company which he claimed was weaving a fabric with silk on one side and cotton on the other?

(Objected to as before.)

A. He claimed a royalty on the number of yards of web made by the loom.

Cross 7. Did he claim that royalty because of their being woven on the looms?

(Objected to as before.)

A. He did.

Cross 8. After the last issue of his patent, did you in your conversations with him call his attention to the fact that his claim was a different one from that which he had formerly stated his invention to have been?

(Objected to as before.)

A. I did not.

Cross 9. Was there nothing said upon that subject?

(Objected to as before.)

178 A. He claimed the product, or the invention of the article, which he did not do before; his whole conversation before was upon the loom.

Cross 10. Is the web which you have described as having silk on one side and cotton on the other called the Union web?

A. It is.

Cross 11. In your conversations with Mess'rs Nicholas and Daggett, regarding the testing of M'r Smith's patents legally, did they express any belief that M'r Smith was not the inventor of what he claimed to have invented?

A. They did.

Cross 12. Did not M'r Daggett say to you, in those conversations, or some of them, that he had information that those fabrics had been made in England long before M'r Smith claimed to have made his invention, and that M'r Smith must have got his invention there before he left England?

(Objected to as leading, immaterial, and incompetent.)

A. He did; and those who studied the subject came to the same conclusion.

(Last part of answer objected to as hearsay, immaterial, and uncalled for by the question.)

Cross 13. Did not M'r Daggett state that he thought M'r Smith's claims were absurd, and that it was, in his opinion, the duty of those engaged in the trade to resist them?

A. He did.

Cross 14. Was that your own opinion, and did you so express it to Mess'rs Daggett and Nicholas?

(Objected to as incompetent.)

A. It was my opinion, and I so expressed it to them.

Cross 15. Have you the circulars sent to the firm of Stoddard, Lovering & Co.?

A. I have several of them.

Cross 16. Will you produce them to be annexed to your deposition?
A. I will.

179 Direct examination resumed by C. F. Blake, esq.:

50. When did your conversations with M'r Smith, in which you say he stated what he claimed as his invention, occur?

A. I had many conversations during the whole period of this controversy.

51. State when and where the first conversation you now recall, in which M'r Smith stated his claims, occurred?

A. It was in Cortland street, in New York, in 1860 or 1861.

52. Will you please state all that took place on that occasion—all that was said at that interview?

A. All that was said was respecting his invention of a loom, and he claimed that he should exact a royalty on webbing woven in that loom.

53. Did you not understand then that he claimed, not only that the loom was new, but that the webbing was new?

A. The loom alone. We had been importers of the article for some time previous.

54. On what ground did he claim a royalty excepting that the web was new?

A. That it was an improvement of his to manufacture a stationary rubber warp.

55. Is not a web manufactured with a stationary rubber warp an improvement on webs?

A. It is so claimed, but I have no personal knowledge of it.

56. And it was for that that M'r Smith asked you to pay a royalty, was it not?

A. He claimed a royalty on the product of a loom that he claimed to have invented.

57. Was not the purpose of M'r Smith's visit to you, as stated by him, to caution you against taking an assignment of his patent?

A. No, sir; not at this visit. That occurred afterward.

58. Did you or your firm ever take an assignment of M'r Smith's patent?

A. No; the Goodyear Elastic Fabric Company did.

180 59. How long after this interview with M'r Smith did the company take this assignment?

A. I cannot be precise; my impressions are about a year.

60. In your answer to the 56th cross-i't'g'y, you say that M'r Smith "claimed a royalty on the product of a loom that he claimed to have invented"; was that the claim that he always made in all those conversations?

A. He made none other till the new issue.

61. How many of these conversations did you have with M'r Smith?

A. Not less than thirty.

62. Please state the dates and places of any of these interviews that you can?

A. It would be impossible for me to state dates, but the place was principally my office in Boston.

63. Can you fix the date of a single one of these interviews?

A. I can only fix the year of my first interview, which was in 1860 or 1861. I can fix no others positively. There is nothing to recall them.

64. Can you fix the date when you gave M'r Smith a letter of introduction to the Glendale Company to see their factory?

A. I cannot; but think it to be within the past eight months.

65. Did you advise the Goodyear Elastic Fabrics Co. to take the assignment above referred to?

A. The board of directors, of which I was one, did. I concurred.

66. Did you at that time believe the patent to be invalid?

A. I believed it to be invalid, but advised its being obtained as a matter of policy.

67. What did the company give for it?

A. As far as my recollection goes, one thousand dollars.

68. Of whom did the company take it?

A. I think his name was Campbell.

69. I understand you to have attempted to state what Smith
181 claimed to be the invention secured to him, in upwards of 30 conversations; were you quite certain that you have not confounded what others understood the invention to be with what Mr Smith said?

A. I am.

J. S. LOVERING.

JULY 13, 1869.—Witness produces Exhibits Lovering A, Lovering B, and Lovering C, to be annexed to this deposition, as requested.

LOVERING A.—N. A. P., *Ex'r.*

To manufacturers, dealers, and venders of Congress boots and shoes:

I having seen a circular issued from the Glendale Manufacturing Company, and said circular amounts to mere clap-trap. They do not say they will guarantee, but say they will take care of any suits brought against their customers; but if their customers were to ask for a guarantee in writing, under seal, signed with the names of all the directors of the company, would they do it? Let their customers try it and see. I have commenced suit against the company, and have given them more than they can do, or will be able to do, to take care of themselves.

They say they have the opinion of eminent counsel that my patent is not good, but they cannot name any pettyfogging patent lawyer who will risk his professional reputation to give an opinion adverse to my patent. They got one counsel from me, as I am informed, by sending him a blank check for him to fill up, at what figure he pleased, and the same counsel is feed for both parties in interest; yet he does not, or dares not risk an opinion adverse to the validity of my patent.

I have the written opinion of the following eminent patent counsel, who, after full and careful investigation declared their belief in the validity of my patent: Hon. William Whiting, Boston, Mass.; Hon. Charles Mason, Washington, D. C.; Charles M. Keller, esq., New York.

182 I fought the Glendale Company for ten months in the reissue of my patent, through all the frauds and deceptions practiced upon me by that sink of iniquity, the Patent Office, their counsellor going privily before the examiner and the Commissioner; the Patent Office tampering with the models of the office to invalidate my claim, putting me to vast trouble and expense, to examine, by experts, ridiculous old patents, and notifying me that I must give notice to the opposition, yet refusing, and did refuse to say who the opposition were, putting the trouble and expense upon me to prove a negative when the opposition should have given proofs against my claim; letting out their objections drop by drop, so that when one objection was removed they could bring up another, going back ninety years in old publications and patents, causing me to travel, in the depth of winter, many thousand miles to find out the patentees of the models which the Patent Office had tampered

with. Fortunately for me I found the patentee living, and have proved the rascality of the Patent Office; and the proofs are on file in their own office against them, if they have not been abstracted from file, as other proofs have.

By forged assignments and many other frauds, my patent was held in law during the life-time of my first patent, and when the Goodyear patent ceased to exist, the Elastic Fabrics Company would have continued to have stamped the elastic webbing under my patent, as they had procured a fraudulent assignment of my patent, but I had an injunction upon them, restraining them from making any use of it; subsequently the courts decided the said assignments were fraudulent and void, and gave me judgment to that effect.

I again caution all infringers of my patent that I demand from them tariffs for using my patented fabric, from the 30th of June last. Do not believe designing parties, who cannot free you from your liabilities.

Stamped webbing can be bought at the following places as cheap as unstamped: W'm Smith, 80 Cliff street, New York; Faxon & Elms, 27 Pearl street, Boston; W. S. Boyce & Sons, Pearl street, Boston,
183 where information will be given where buyers can purchase goods with stamped web in them as cheap as the unstamped.

W'M SMITH,
80 *Cliff Street, New York.*

LOVERING B.—N. A. P., *Ex'r.*

Caution and notice.

Whereas letters patent having been granted unto W'm Smith for an improvement in weaving corded fabrics, on April 5th, 1853, extended March 28th, 1867, and reissued June 18th, 1867, and again reissued January 14th and June 30th, 1868, in three distinct and different patents, covering all elastic fabrics for garters, elastic webbing for boots and shoes, &c.

In spite of the rings formed and sums of money collected and used to defraud me of my just rights, the Patent Office, after ten months of rigid, and at times unfair opposition to my just claims, extending over patents, models, publications, pieces of fabrics, over a period of ninety years, have reluctantly admitted my claims and issued the patents to me.

I hereby notify all manufacturers, importers, and dealers in elastic webbing for gores for boots and shoes, and all other manufacturers and dealers in gaiter webbing, suspenders, velvets, carpets, tailors' trimmings, and all other fabrics made under my patent, that I shall prosecute my rights to the uttermost, and shall not forget their motto, "Ho! d——n him, it is no matter if he has got rights; we can outmoney him, and have bought the Patent Office up."

All manufacturers, dealers, and retailers must apply for licenses at No. 80 Cliff street, or by letter, post-office box 3214.

WILLIAM SMITH.

NEW YORK, *June* 30, 1868.

184 LOVERING C.—N. A. P., *Ex'r.*

Caution.

Having had my patent extended for seven years from the 5th day of April, 1867; reissued on the 18th day of June, 1867; again reissued, in

three distinct several patents, on 14th day of January and the 30th day of June, 1868—

I hereby notify all manufacturers, venders, and retailers of Congress boots and shoes, when the gores are of woven elastic webbing; also, all dealers and venders of suspenders and garters made after and pursuant to my patent for an improvement in weaving elastic webbing;

And demand that all dealers and venders of goods made in part or in whole according to my patent, shall pay me my tariffs from the thirtieth day of June, one thousand eight hundred and sixty-eight, and all such parties must take out a license from me to manufacture, deal, or vend such goods.

I would further caution them against unprincipled parties pretending to give guarantees to them for infringing my patent, as all such guarantees are valueless; and no man can give a guarantee to do an unlawful act.

I shall give no further notice to parties. Those failing to take out a license will be proceeded against accordingly.

WILLIAM SMITH,
80 *Cliff st, New York.*

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 12th and 13th days of July, A. D. 1869, I caused to appear before me Joseph S. Lovering, a witness on behalf of the complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and
185 nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this 15th day of July, annoque Domini, 1869.

[L. S.] N. AUSTIN PARKS,
Examiner, &c., Notary Public, County of Suffolk.

JULY 12, 1869.

CHA'S WINSLOW, being duly sworn, doth depose and say in answer to interrogatories propounded to him by Cha's F. Blake, esq., as follows, viz:

1. State your name, age, residence, and occupation.

A. Charles Winslow; age, 60 years; residence, Lynn, Massachusetts; occupation, shoe manufacturer.

2. How long have you known W'm Smith, the complainant, and where did you first know him?

A. Since about '50 or '51, perhaps a little before. I think I first knew him in New York.

3. Did you ever act as agent for Horace H. Day, and, if so, in what business?

A. I was connected indirectly with him under certain rights that I had which I received from him.

4. What were those rights?

A. They were in connection with a Congress boot, which we had the exclusive right to make.

5. When did those rights begin?

A. I began making the boots in '45, but didn't obtain my rights, my exclusive rights, till 1847.

6. What kind of gores did you use in your Congress boots up to about 1850?

A. We used shirred goods, or corrugated goods.

7. Whose shirred goods, and how made?

186 A. The patent was granted to M'r Goodyear on the shirred goods. They were made by cementing two pieces of cloth together with the strips of rubber stretched out before the cloth was cemented.

8. Was that the kind of elastic gores used in the American market for boots at that time?

A. Yes.

9. Was any other elastic gore in general use at that time?

A. Not to my knowledge.

10. Do you remember taking out of a lady's boot an English elastic gore? If so, state when it was.

A. I took out a wire spring from a lady's boot in the year 1848, I think.

11. How was this applied to the boot?

A. It was sewed in at the side, the same as our present gores.

12. How was the gore constructed?

A. Of brass springs coiled up in ribs that run across the gore perhaps a quarter or third of an inch apart. They were covered with cloth both sides.

13. When did you first become acquainted with M'r Smith's invention of elastic webbing?

A. I think it was about '51 or '52.

14. Did you ever propose to the Nashawannock Co. to purchase M'r Smith's invention: if so, when?

A. I spoke to M'r Sawyer, the agent of the company, I think in the year '53.

15. What reply did he make to you?

(Objected to as immaterial and incompetent.)

A. He said that he didn't know what it was, and would like to see it, and wanted me to lend him my copy of the patent. He kept the copy about a month and then returned it to me.

16. At the time of this conversation with M'r Sawyer was the Nashawannock Company making elastic webbing for boot-gores?

A. My impression is they were not, but were making suspenders. I recommended it because I thought it was cheaper.

187 17. What reason did M'r Sawyer give you for not purchasing the patent?

A. I think it was '54, instead of '53, that I spoke to him. The reason is, because my rights expired in '54, and I didn't recommend it until my rights had expired. I don't know as he gave any reason for not purchasing the patent.

18. How soon after this conversation did the Nashawannock Co. begin to manufacture boot-gores like M'r Smith's, if ever?

A. I don't recollect. They made some with that and I bought them, or rather I sold it for them, sending customers for it.

19. State whether or not before your rights granted by Day expired you found that M'r Smith was selling his boot-gores in the Boston market.

A. Yes, sir. I came out with circulars forbidding his selling those goods, as they interfered with my rights. I think this was in '53.

20. Please annex those circulars.
A. I will if I can find them.

Adjourned to 13th, at 10 a. m.

Adjourned to 14th inst., at 2 p. m.

14TH JULY, 2 p. m.

Resumed.

21. When did you first see a boot having a woven elastic gore?
A. In the spring of '51.
22. Please state the circumstances under which you saw it and how you fix the date.
A. I was in New York at that time. Some one came into M'r Day's store and told us that some one in Brooklyn was selling Congress boots without Day's goring. M'r Day requested me to go over to Brooklyn
188 and see what it was. I went over and found them, and the dealer gave me a pair with woven web goring in them. I brought them over to New York, and M'r Day took the boots with Dupont & Hyatt's patent and went to M'r F. B. Cutting to ask his opinion as to infringement of their patent. M'r Cutting gave a written opinion, dated April 26th, 1851. That is the way I fix the date.
23. Whose web was it that was used in this boot?
A. I don't know who made the web, but I afterwards heared that it was M'r Smith's.
(Objected to as hearsay after the word "web.")
(Questions and answers objected to as immaterial and not relevant to the issue.)

And in answer to cross-interrogatories propounded by Benj. Dean, esq., of counsel for respondents, deponent saith as follows, viz:

Cross 1. Have you found the circulars, and will you annex them?
A. Yes; I found one and produce it, marked Winslow A., N. A. P., Ex.
Cross 2. Was that circular issued in consequence of the discovery alluded to in your 22d direct interrogatory?
A. No; it was not issued till about two years after. It was issued in consequence of Smith's selling other web here—to M'r Perkins, for M'r Alley, which was in 1853—after the issue of M'r Smith's patent.
Cross 3. Of whom in Brooklyn did you purchase said shoes?
A. I cannot tell.
Cross 4. Where was the man's place of business?
A. I can't say; it was in one of the principal streets. He was one of the principal shoe dealers.
Cross 5. Can't you tell the name of the street?
I don't know the names of any of the streets there.
Cross 6. Can you give no information by which the man of whom you purchased the shoes can be traced?
189 A. I cannot; he was a stranger to me; I never saw him before or since. He said the shoes were sold to a lady on Saturday night and returned on Monday as damaged goods, the gores having broken and cockled up. He stated that he had three or four more pairs on hand, which he was going to return to the manufacturer.
(The last two sentences of this answer objected to as hearsay.)
Cross 7. Did the other three or four pairs cockle up in the same manner?
A. I did not see them. I presume not, unless they were worn.

Cross 8. What became of the shoes the gores of which cockled up?

A. I brought them home and kept them until about a year ago, when I burned them.

Cross 9. Did you notice how they cockled up?

A. It was done by the strands breaking.

Cross 10. Did the manufacturer tell you of whom he received the goods?

A. I never saw the manufacturer. I don't know who manufactured them.

Cross 11. Did not the person of whom you purchased them manufacture them?

A. No, sir; he was a retailer, or seller. He said he should return them to the manufacturer.

Cross 12. Did you not ask the retailer who the manufacturer was?

A. No, sir.

Cross 13. Why did you not ask him?

A. It's not a proper question to ask where a man buys his goods. I don't suppose he would have told me if I had asked him.

Cross 14. Did you not go to Brooklyn for the express purpose of ascertaining whether the Dupont & Hyatt patent was being infringed upon, and by whom?

A. Yes; that was my business.

190 Cross 15. Why then did you not inquire after the manufacturer?

A. It was not my place or duty. I had no right to inquire into his private business.

Cross 16. Who directed you where to go to find the shoes?

A. M'r Day.

Cross 17. By what ferry did you go to Brooklyn?

A. I don't know that. I presume by the Fulton Ferry.

Cross 18. How far from the ferry was this store?

A. I don't recollect that; it was on one of the main streets.

Cross 19. Did you make no memorandum of the store?

A. No, sir. I didn't consider it necessary.

Cross 20. Was the store carried on by an individual or by a firm?

A. I couldn't say.

Cross 21. Was the rubber in the gores vulcanized, or not?

A. It was. That was one of the reasons that made it break.

Cross 22. By whom was the rubber vulcanized?

A. It is impossible for me to tell.

Cross 23. Did the company have the exclusive right to the use of vulcanized goods?

A. There was no company at that time.

Cross 24. Did M'r Day have any interest in the patent for vulcanizing rubber at that time?

(Objected to as immaterial.)

A. He had his rights under Goodyear; that's why he acted with reference to this boot.

Cross 25. Did you know of the making of elastic webs before 1851 for other purposes than shoe-gores?

A. Yes; for suspenders, garters, etc.

Cross 26. Were those fabrics woven?

A. There were woven goods, but no goring. M'r Day had only
191 the right for shirred goods. The suspenders, garters, &c., were some woven and some shirred. M'r Day had a right to the shirred goods under Goodyear, and M'r Day and I owned the Dupont & Hyatt patent for gorings.

Cross 27. How long before '51 were elastic fabrics woven for suspenders, garters, &c.?

(Objected to as immaterial.)

A. I don't know; they were woven of native gum in '47, but they were not very elastic, and were narrow goods not adapted to our use.

Cross 28. Did you forbid the manufacturers of those goods manufacturing goods for shoe-gores?

A. M'r Day told them that he had rights, and that if they did so they would interfere with them; but they never manufactured any shoe-goring or goods suitable for it to my knowledge.

(First part of answer objected to as hearsay.)

Cross 29. Did you not go yourself to Connecticut to forbid the manufacturers of suspenders, garters, &c., manufacturing goods for shoe-gores?

A. I went with M'r Day but he didn't forbid their manufacturing suspenders or garters, as he had no right to. He told them not to make any shoe-gores.

Cross 30. How early was this?

A. 1847 or 1848.

Cross 31. When did your connection with M'r Day begin?

A. In 1847.

Cross 32. How early had you any interest in the Dupont & Hyatt patent?

(Objected to as immaterial.)

A. In March, '47.

Cross 33. When you went with M'r Day to forbid the making
192 of goods for shoe-gores, as you have stated, did you go into the factories where the suspenders and garters were made?

A. Where the suspenders were made I saw no garters.

Cross 34. What factories did you go into, and where were they situated?

(Objected to as being new matter.)

A. I don't remember. I have forgotten the persons and places.

Cross 35. How were the rubber strands of the suspenders you saw woven covered at top and bottom?

(Objected to as new matter.)

A. I don't know of any other way than in ordinary weaving at that time.

Cross 36. How long were you with M'r Day?

A. I was not with M'r Day. I was here in Boston. I was interested with him in the patent about four years.

Cross 37. Did you see in M'r Day's store in New York any woven elastic webs suitable for shoe-gores in '47, '48, or '49?

A. No, sir.

Cross 38. Did you see any woven imported shoe-gorings in M'r Day's store about that time?

(Objected to as incompetent and immaterial.)

A. I did not. In 1849 I saw in M'r Day's store some strips of garters that M'r Day had imported from England. They were samples only about two inches long. M'r Day said he sent out to England to get samples of all the latest inventions.

(Objected to as hearsay.)

Cross 39. Can you describe how the rubber strands in those garters were covered?

A. With cloth—that's all I know.

193 Cross 40. Were they covered at top and bottom with more than weft threads?

(Objected to as leading and as new matter.)

A. I can't say.

Cross 41. What was your interest in the Dupont and Hyatt patent from '48, and how long after?

A. I owned the exclusive right for Massachusetts, Maine, and New Hampshire during the existence of the patent till 1854.

Cross 42. What interest had you in the business of M'r Day during that period or any part of it?

(Objected to as before.)

A. No interest with his business. I bought goods of him at times as I would of any other merchant.

Cross 43. Were you not interested with him during that time in anything?

(Objected to as before.)

A. Only in buying goods of him, as I have said.

Cross 44. If you had the exclusive right to the use of elastic shoe-gores, why, when you want to forbid the making of goods suitable for elastic shoe-gores, did M'r Day do the forbidding and you keep silent?

(Objected to as before.)

A. Because it was his business. I bought my rights of him and he was bound to protect me.

Cross 45 (de bene esse). You have said in your direct examination that after the purchase of the shoes in Brooklyn you learned or were informed that the gores were made by M'r Smith; how did you so learn or how were you so informed?

A. It was so reported at the time.

Cross 46 (de bene). By whom?

194 A. I could not say; by a number. It was a common report.

Cross 47. (de bene). Was the report that those particular shoe-gores were made by M'r Smith? Is that what you mean?

A. (De bene). It was reported that he made the goring.

Cross 48 (de bene). Do you mean that it was reported that he made the goring in those particular shoes?

A. Yes.

Cross 49 (de bene). Can you name any person whatever that gave you that information?

A. No, sir.

Cross 50. Who printed the circular marked "Winslow A"?

A. I don't know.

Cross 51. How certain are you that this was printed in 1853?

A. Because I got it up immediately after Smith got his patent out, the date of which is there stated.

Cross 52. Who procured this certificate from W. L. Whiting?

A. M'r Day. M'r Day had sued Whiting before that time and they settled, and Whiting gave Day this certificate, as I understood it.

Cross 53. When you issued this Exhibit A to the public did you believe in the truthfulness of the certificates?

A. Yes, sir.

And in answer to direct interrogatories resumed, deponent saith:

24. Did, in 1855, a branch of an English house here send to you to learn to make woven elastic webs, and what was the name of that house?

(Objected to as incompetent and immaterial.)

A. It was after '55—about 1859. I don't know the name of the house.

195 25. Did you give that instruction?
(Objected to as incompetent and immaterial.)
A. I did, in writing.

And in answer to cross-interrogatories resumed deponent saith:

Cross. 54. Did you describe in writing how the rubber strands were covered at top and bottom?

A. No, sir.

Cross. 55. What description did you give?

A. With regard to the elasticity and uniformity.

Cross. 56. Did you merely state the extent of the elasticity and the uniformity of the goods?

A. That was the principal.

Cross. 57. Do you remember anything else that you told them? If so, state it now.

A. I recommended them to alter their looms to conform to it.

Cross. 58. What alterations of their looms did you recommend? Describe them specifically.

A. No particular alteration. I only gave the result—that is, elasticity and uniformity.

Cross. 59. Where was the place of business of the branch of the English house?

A. I don't know.

Cross. 60. Was it in Boston?

A. I don't know. I was introduced to them in Pearl street in Boston.

Cross. 61. By whom?

A. I don't recollect; some of the trade—some finders. There were complaints regarding the imported webbings. I was introduced to explain what the trade required in order to perfect their goods, and the directions I gave were to increase the elasticity and uniformity.

CHARLES WINSLOW.

196 EXHIBIT WINSLOW A.—N. A. P., *Ex.*

To the public.

An advertisement appeared lately from a M'r Smith, giving the impression that he had a patent for an article for a Congress boot.

M'r Smith has a patent for machinery in weaving (a copy of which can be seen at my office), but what that has to do with a boot, any more than a steamboat, I have yet to learn.

The only patent ever granted for a boot or shoe with an elastic gore or rubber spring was granted to Dupont & Hyatt, in the year 1840, and the said patent for the States of Massachusetts, Maine, and New Hampshire belongs exclusively to me; and all persons manufacturing boots or shoes with an elastic gore or rubber spring, unless they have a license from me, are infringers of my patent. Having devoted a large part of my time the last seven years, and a large amount of money, in perfecting and introducing the Congress boots to the public, I shall prosecute all persons infringing my rights, and hold them legally responsible for all damages. And I hereby caution all persons from using woven web in the manufacture of Congress boots, and refer them to the following legal opinion from the Hon. Francis B. Cutting, member of Congress from New York, one of the most able and distinguished patent lawyers in the United States, to show that woven web is an infringement of my

patent; also the opinion of the Hon. Rufus Choate, whose reputation as a lawyer is well known to all. He fully coincides and agrees with M'r Cutting.

LEGAL OPINIONS.

I have examined the letters patent issued to Dupont & Hyatt, bearing date the 20th October, 1840, and am of opinion that the use of elastic gores, made by weaving fibrous materials which expand and
197 contract, in combination with India-rubber springs, if applied in the manufacture of gaiter-boots, is an infringement upon the patent.

F. B. CUTTING.

NEW YORK, *April* 26, 1851.

BOSTON, *June* 6, 1851.

I have made a similar examination of the letters patent above referred to and concur in M'r Cutting's opinion.

RUFUS CHOATE.

One word as to the utility of woven web. It is so porous that it lets in dirt, dust, and water, and in wearing it "frays" out, the cords break off, pull out, and cockle up. Samples of such boots, made of woven web, can be seen at my office by those who wish. The following certificate of M'r W. L. Whiting, one of the oldest and best manufacturers in Broadway, New York, I presume will satisfy the most incredulous, he having given it a fair trial.

Certificate.

NEW YORK, *March* 3, 1852.

This may certify that I have, after many years' experience, made thorough trial of the different articles of elastic or gore for Congress boots, attempted to be introduced as a substitute for Horace H. Day's webbing or elastic gore; and I freely state that the article made by M'r Day is altogether the best and cheapest, in my opinion, and cheerfully recommend the same to my friends.

W. L. WHITING,
Manufacturer of Ladies' Congress Boots,
No. 435 Broadway, New York.

Patent elastic shirred webbing for gores, of every desirable shade and color, together with licenses under the patents, can be had of—

CHARLES WINSLOW,
Proprietor of the Congress Boot Patent in the States of Maine, Massachusetts, and New Hampshire,
No. 5 Clinton Street, Boston.

I, N. Austin Parks, a notary public, duly authorized, admitted,
198 and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that, on the 12th and 14th days of July, A. D. 1869, I caused to appear before me Charles Winslow, a witness on behalf of , in the above-entitled case; and that he, having *being* duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same,

his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this 15th day of July, anno-que Domini 1869.

[L. S.]

N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

JULY 13, 1869.

NATHAN NICHOLS, having duly affirmed, doth depose and say, in answer to interrogatories propounded to him by C. F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Nathan Nichols; age, 53; residence, Salem, Massachusetts: occupation, importer and dealer in shoe-manufacturers' goods.

2. How long have you been in this business?

A. Since 1854 on my own account.

3. How long have you known W'm Smith, the complainant?

A. For twelve years certainly.

4. When did you first hear of his claim to be the inventor of the elastic web?

A. At the time I first saw M'r Smith; some twelve years ago.

199 5. Are you a member of the organization of the trade to oppose or resist M'r Smith's patent and his claims under them?

A. I attended a meeting of the finding houses of Boston, where it was agreed to procure an opinion as to the validity of the patent, and if the opinion was against its validity to pay proportionate parts of the expense of testing it in court.

(Counsel for respondents objects to this entire line of inquiry as having no bearing upon the issue.)

6. Has that opinion yet been obtained, and who gave it?

A. It has, from Judge Curtis.

7. Was it a written opinion, and will you produce a copy and annex it to this desposition?

A. It was a written opinion. I will produce a copy to be annexed hereto.

8. Are you a member of the committee of the organization of the trade in this city?

A. I am.

9. Who is treasurer of that organization?

A. We have none, so far as I know.

10. Who has hitherto paid the current expenses of that organization?

A. I have paid myself what money has been paid, from my own funds.

11. How much has been paid, when, and what for?

A. The date I cannot give; six hundred dollars has been paid to M'r Dean for some expenses he had been at on his own account, and the employment of experts. Nothing else that I know of.

12. Has the organization employed Mr. Gifford, and who has paid him?

A. The organization have not employed him so far as I know.

13. How much did you contribute to the previous opposition to the patent carried on by the Glendale Co.?

A. Nothing.

200 14. Do you know by whom beside the Glendale Co. that opposition was carried on?

A. I do not.

15. Do you know of the New York organization to oppose these patents?

A. There are parties in New York who have agreed to pay their part of the expense of suit, but who they are I do not know.

16. Do you know who is their treasurer?

A. I do not.

17. Who has or holds the subscription paper of either of these organizations?

A. I do not know.

18. How many conversations have you had with M'r Lovering in regard to this opposition?

A. I should think twenty.

19. Prior to the organization in Boston or New York had you submitted to or acknowledged the validity of M'r Smith's patents?

A. I had. I had made an affidavit that I believed he had a claim to a valid patent.

20. When and why did you cease to believe this?

A. In June, 1867. My first reason for changing my belief was the receipt of some papers from my partner, Edward M. Farnsworth, in England, and a statement of his that he had conversed with parties in England who had told him that the patent was invalid. Nothing more, except conversation with other parties and further investigation on my own part.

21. Who were those other parties?

A. I had the opinion of M'r Whiting, which was given to M'r Daggett and communicated to me. This was in 1867.

22. Did you have any conversation with M'r E. H. Sawyer or with M'r Lovering which induced you to change your opinion of the patent; if so, when?

A. I have subsequent to that time conversed with both parties, but whether they had any influence upon my opinion I cannot say.

201 And in answer to cross-interrogatories propounded by Benjamin Dean, esq., of counsel for respondents, deponent saith as follows, viz:

Cross 1. Were the reports of the examiner upon M'r Smith's application for his last issue, and of the examiners-in-chief, testified to by M'r Daggett, called to your attention, and did they have any effect upon your mind and judgment?

A. They certainly confirmed me in the position that I had taken.

Cross 2. Did part of the information which confirmed you in your opinion consist of information derived by M'r Daggett from England and communicated to you?

(Objected to as immaterial.)

A. It did.

Cross 3. Was that information communicated to M'r Daggett by M'r Archibald Turner, of Leicester, England?

(Objected to as hearsay.)

A. I do not know. I think M'r Daggett showed me letters from Archibald Turner.

Adjourned to 14th.

14th of July, resumed.

And in answer to direct examination resumed deponent saith as follows:

23. Please look at Nichols Exhibit A, and state whether you ever signed an agreement like it; and, if yea, when.

(Objected to as immaterial.)

A. I cannot say, but I think I did. The time I cannot state at present.

202 24. How large a proportion of the trade signed that, as nearly as you can remember?

(Objected to as before.)

A. I cannot tell. I know nothing about it. I have forgotten.

25. Was it not agreed by the Goodyear Elastic Fabrics Company that they should obtain the signatures of all the trade to it?

(Objected to as before.)

A. I do not recollect.

26. Who asked you to sign it?

(Objected to as before.)

A. I don't remember.

NATHAN NICHOLS.

NICHOLS EXHIBIT A.—*N. A. P., Ex'r.*

Agreement No. .

Agreement.

OFFICE OF THE GOODYEAR ELASTIC FABRICS COMPANY,

New York, .

This agreement, made this day of , A. D. eighteen hundred and sixty- , between the Goodyear Elastic Fabrics Company of the first part, and , of the second part, witnesseth:

Whereas letters-patent of the United States were issued to Charles Goodyear, June 15th, 1844, for a new and useful improvement in India rubber fabrics, which were surrendered and reissued December 25th, 1849, and on the 14th June, 1858, were extended for seven years, and on the 20th day of November, 1860, were surrendered and reissued in two letters-patent for new and useful improvements in the art of pre-

203 paring, and in the manufacture of caoutchouc, which letters patent it is claimed that the part of the second part ha infringed; and whereas the party of the first part are the owners under such patents of the exclusive right to make, use, and sell all plaited, woven, braided, knitted, shirred, or corrugated goods made in part or whole with India rubber, such as is described in such letters patent:

Now, therefore, in consideration of the sum of one dollar paid by the part of the second part, to the party of the first part, the party of the first part hereby releases the part of the second part from all past damages for infringing the rights claimed by this company, to manufacture and sell and use India-rubber fabrics of any sort.

And the part of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that will not hereafter manufacture, use, or sell, or cause to or procure to be manufactured or used or sold, any elastic fabrics made in part or in whole of India rubber, the rights of which are secured to said company under said patents, in any form, until the same shall have been stamped

by said company, its successors or assigns, with its stamp, and will not be engaged directly or indirectly in any infringement or violation of the rights which are secured to this company, under said patents, in any form.

And the part of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that will not hereafter import or procure to be imported any elastic fabrics made in part or whole of India rubber, the rights of which are secured to said company, under said patents, in any form, without the license of said company, its successors or assigns, first had and obtained, and that will not sell or use such goods until the same shall have first been stamped by said company, its successors or assigns, with its stamp.

204 And the party of the first part further agrees to protect the part of the second part against all lawful claims made against by any other persons owning the rights, under said Goodyear patents, to make and sell the goods so stamped as aforesaid by the party of the first part. And also to defend the part of the second part against all lawful claims made against for infringing the patent of William Smith, by the use or sale of the goods so stamped by the party of the first part.

In testimony whereof, the said company has caused their seal to be affixed, and these presents to be signed by their president or their treasurer, and countersigned by their secretary, in their behalf, and the part of the second part ha hereunto set hand and seal the day and year above written.

, *Secretary.*

Executed in presence of—

Witnesses to signatures of party of the first part.

Witness to signature of part of the second part.

JULY 13, '66.—Shown to me this day.

J. S. LOVERING.

At the execution of a commission for the examination of witnesses, between William Smith, Ellen M. Smith, and William Sharp, plaintiffs, and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company, defendants, this paper writing was produced and shown to Joseph S. Lovering, and by him deposed unto at the time of his examination, before

A. J. ROBINSON,
Commissioner.

EXHIBIT NICHOLS B.—N. A. P., *Ex'r.*

BOSTON, *July* 6, 1869.

Messrs. Nathan Nichols, Henry L. Daggett, and Warren L. Tower, committee:

205 GENTLEMEN: At your request we have examined with care the evidence that can be adduced in answer to the patent of William

Smith for an "improvement in corded and elastic fabrics," and are of opinion that the patent cannot be sustained.

B. R. CURTIS.
BENJ. DEAN.

I, N. Austin Parks, a notary public, duly authorized, admitted and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 13th and 14th days of July, A. D. 1869, I caused to appear before me, Nathan Nichols, a witness on behalf of the complainant in the above-entitled case; and that he having been duly affirmed to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this 15th day of July, annoque Domini, 1869.

[L. S.] Quod attestor. N. AUSTIN PARKS,
Examiner, & Notary Public, County of Suffolk.

JULY 14, 1869.

WALTER N. DOLE, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Charles F. Blake, esq., of counsel for complainants, as follows, viz:

1. State your name, age, residence, and occupation.

206 A. Walter N. Dole; age, 40 years; residence, Lynn, Massachusetts; occupation, importer and seller of shoe findings.

2. How long have you been in this business?

A. Nine years—five years in business for myself.

3. How long have you known W'm Smith, the complainant?

A. I think since 1862.

4. Do you belong to the organization to oppose M'r Smith's patents?

A. If you called it an organization—I signed the paper agreeing to pay part of the expense of any suit that might be brought, and I expect to do so.

5. State what you or others have done to oppose M'r Smith's patents, or to prevent persons in the trade from recognizing or submitting to them.

A. I don't know what others have done. I have done nothing but sign this paper agreeing to pay my portion of the expense of any suit that was brought.

6. When you have seen persons in the trade at Lynn or in Boston, have you conversed with them about M'r Smith's claims?

A. I have.

7. What have you said about them?

A. I've given them my opinion and that is all. They have asked me what I thought of M'r Smith's patents, and I have told them that we had procured the opinion of a first-class patent lawyer, and he had decided that the patent was invalid, and that was all I know about it; that the case would probably be tried.

8. Before this organization do you know of any opposition that was made to Smith's patents?

A. The finders were called together to consult about it before the reissue was granted.

9. Who were present at that meeting?

A. I should think about half the finders in Boston were present.

10. Do you remember who called this meeting?

A. I do not.

11. What was done in consequence of this meeting?

207 A. It was agreed to get the opinion of a patent lawyer, M'r W'm Whiting.

12. An opposition was then carried on before the Patent Office, was there not?

A. Not that I know of.

13. Did you sign a contract with the Goodyear Elastic Fabrics Company, or any of your firm?

A. No.

And in answer to cross-interrogatories propounded to him by Benjamin Dean, esq., deponent saith as follows:

Cross 1. Did the opposition of M'r Smith's claims, so far as you know or were connected with it, arise in consequence of new claims made by him differing from those he had before made?

(Objected to as leading.)

A. I think it did.

Cross 2. Did it begin at or about the time of the last issue; the issue of his patent for a fabric?

A. The inquiry was made before the reissue, as I have testified. The opinion was procured that his first patent was invalid, and did not cover the product.

Cross 3. At the time this opinion was obtained had M'r Smith begun to make a claim different from what he had before made—in other words did you take means to procure an opinion when you understood that he claimed his invention covered the fabric?

(Objected to as leading.)

A. We did.

WALTER N. DOLE.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the common-
208 wealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 14th day of July, A. D. 1869, I caused to appear before me Walter N. Dole, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this 15th day of July, annoque Domini, 1869.

[L. S.] N. AUSTIN PARKS,

Examiner & Notary Public, County of Suffolk.

JULY 13TH, 1869.

WARREN L. TOWER, duly sworn, doth depose and say, in answer to interrogatories propounded by Charles F. Blake, esq., as follows, viz:

1. State your name, age, residence, and occupation.

A. Warren L. Tower; age, 38 years; residence, Boston, Massachusetts; occupation, importer and dealer in shoe manufacturers' goods.

2. How long have you been in this business?

A. As a partner for about seven years, and for seven or eight years before that as clerk and salesman.

3. For whom were you clerk?

A. For Blanchard, Converse & Co., Cochran & How, and How Brothers.

4. Are you a member of the organization in this city to oppose M'r Smith's patent?

A. I was present at a meeting to take measures to get an opinion as to the validity of the patent.

209 5. Question 4 repeated.

(Objection to this line of inquiry as having no legal bearing upon the issue or trial made by respondents' counsel.)

A. I was present at a meeting of the finders of Boston who came together to take measures to obtain a legal opinion as to the vidality of the Smith patent.

6. Question 4 repeated.

A. I have answered the question to the best of my knowledge and belief.

7. Do you know whether there is or not an organization of the finding trade in the city of Boston to resist M'r Smith's patents or to defend suits brought under them?

A. I do.

8. Is there such an organization in the city of Boston?

A. I believe there is.

9. Do you belong to it?

A. I do.

10. How much money have you paid to resist M'r Smith's patent, or promised to pay?

A. I have not paid a cent, nor promised to pay any particular amount.

11. Have you promised to pay any amount to be ascertained here. after?

A. I have.

12. Is there a similar organization in New York?

A. New York parties are connected with the Boston organization.

13. Name these parties.

A. Gillespie, Studwell & Co., Shattuck & Wyckoff.

14. Have you visited the trade in New York and urged or advised them to resist M'r Smith's patent?

A. I visited part of the trade in New York and invited them to become members under the agreement to obtain a legal opinion as to the validity of the patent.

15. Where is that agreement now? Will you produce and annex to your deposition a copy of it?

A. I should prefer to consider the matter over night before doing so.

210 (Counsel for complainant objects to the delay asked for by the witness and requires the witness to answer now; and if the

witness still refuses to answer, that he appear to morrow, 14th July, 1869, at 10 o'clock a. m.)

Adjourned to 14th July, at 10 o'clock a. m.

14th July, 1869, resumed.

16. Look at Exhibit Tower A, and state whether it is a copy of the agreement referred to in your 14th answer.

A. It is. It was copied at my request for this purpose.

17. Did you visit M'r Smith's licensees in New York and warn them not to pay license money to him or to recognize his patents?

A. I did not know who his licensees were.

18. Did you visit any persons in New York and warn them not to take license under his patents?

A. I did not.

19. Did you not visit Bailey & Co., and Armstrong & Sons, and so warn them?

A. I know I did not Armstrong & Sons, and Bailey & Co. I don't think I did; I don't recollect doing so.

20. Have any additional names been procured to those which appear upon the paper?

A. It was copied this morning and includes all the names.

And in answer to cross-interrogatories propounded to him by Benj. Dean, esq., deponent saith as follows, viz:

Cross 1. At the time of the commencement of this organization, or not a great while before, had there been a change in M'r Smith's claims regarding his invention?

A. I think there had.

Cross 2. Had he begun to claim that he was the inventor of the fabric used for shoe gores?

A. He had not before that.

211 And in answer to direct examination resumed by Cha's F. Blake, esq., deponent saith as follows, viz:

21. Did you ever have any conversation with M'r Smith as to what his claims were?

A. I had.

22. When, how many, and where?

A. I cannot state.

23. State as near as you can.

A. Not having charged my mind with them, I cannot state. I think about the years 1864, 1865, and 1866, or along there, at my store, No. 11 Pearl st.

24. Did not M'r Smith claim that he was the first man who ever made this woven elastic web?

A. I can't recollect that he ever did.

25. Was it not generally known as "Smith's elastic web"?

A. I should say not.

WARREN L. TOWER.

EXHIBIT A, TOWER.—N. A. P., *Ex'r.*

Articles of agreement made and entered into this 29th day of October, A. D. 1868, by and between Henry L. Daggett, Nathan Nichols, and Warren L. Tower, all merchants and doing business in Boston, in the State of Massachusetts, parties of the first part, and all the other subscribers hereto, parties of the second part.

Whereas one William Smith, of the city, county, and State of New York, has obtained letters-patent for improvements in weaving corded

fabrics, and also letters-patent for elastic fabrics, and whereas all the parties to this agreement are of the belief that said William Smith is not the original and first inventor or discoverer of said improvement, or of said fabric, or of anything described or claimed in any of his several patents relating either to said improvement in weaving or to said elastic fabric, and whereas all the subscribers hereto are manufacturers
212 of, dealers in, or consumers of elastic fabrics, and said Smith has threatened to bring actions at law and suits in equity against all makers and users of and dealers in elastic fabrics for alleged infringements of his said patents, unless they shall pay large royalties to and take licenses from said Smith, and whereas the parties hereto have agreed to and with each other that they will pay their several proportions of all expenses that may be incurred in testing the legality and validity of said claims of said Smith.

Now, therefore, in consideration of the premises and of the promises and agreements of the parties of the second part, the said parties of the first part do jointly and severally promises and agree with the parties of the second part that they will pay their several shares of the expenses incurred for the purposes expressed in this agreement, said shares being of an equal amount with the shares to be paid by the several parties of the second part.

They further promise and agree to and with the parties of the second part that they will employ counsel and take all needful and useful means proper to be taken to test the validity of said claims of said Smith and of said patents, and to defend any and all of the parties hereto against said claims, and any and all actions or suits brought by said Smith or any other person or persons to enforce said patents or either of them against any one of the parties hereto or against any other persons which it may be necessary to defend to secure the general objects of this agreement. Said parties of the first part further promise and agree to and with the parties of the second part that they will assess said expenses equally upon all the parties hereto, share and share alike, and endeavor to collect the same, and if from inability or other cause any of the parties hereto shall fail to pay their proportions thus assessed, the parties of the first part will make assessments upon the others, parties hereto, to meet and supply such deficiencies.

The parties of the second part, in consideration of the premises and of the promises and agreements aforesaid, to hereby promise, jointly and severally, and agree to and with the parties of the first part that
213 they will pay their several proportions of the expenses incurred in carrying out the object and purposes of this agreement, that they will pay all assessments made by said parties of the first part for the purposes aforesaid.

The parties of the second part do hereby severally appoint and constitute the parties of the first part to be their true and lawful attorneys to do and perform all and singular the things necessary and proper to perform in the premises. Hereby ratifying and confirming the same as fully and completely as if they were always personally present and directing their several acts and doings, until the objects and purposes of this agreement shall be fully accomplised. It is further mutually agreed that the parties of the first part may permit persons to sign as parties of the second part, expressing against their signatures that they are held for a less amount than a full share; and in such cases said parties shall be assessed according to the amount thus expressed at the time of said signatures. Either of the parties hereto may withdraw from this agree-

ment by notice in writing to the parties of the first part, upon paying his full share of all expenses incurred up to the time of withdrawal.

Witness our hands this thirtieth day of October, A. D. 1868.

N. NICHOLS,
H. L. DAGGET,
WARREN L. TOWER,
Parties of the First Part.

And the subscribers hereto, parties of the second part.
NICHOLS & FARNSWORTH, including N. Nichols, of the first part.
H. L. DAGGET & CO., including H. L. Dagget, of the first part.
HOW BROTHERS & CO., including W. L. Tower of the first part.
SEARS & WARNER.
ALEX. STRONG & CO.
JOHNSON & THOMPSON, C. F. HARRINGTON.
E. K. BUTLER.
PELTON, SNELL & CO.
214 CRAGIN, PAGE & CO. Pro rata according to amount of importation.
SWEETSER, SKILTON & DOLE.
WILSON & MERRILL.
GEO. F. BREED.
GILLESPIE, STUDWELL & CO.
MULFORD, CARY & CONKLIN.
SHATTUCK & WYCKOFF.
M. H. CHAPIN & CO.
SIMMONS, RUTTER & CO.
REID C. W. CALLUM, ½.
SAM'L D. GORMAN, ½.

I, N. Austin Parks, a notary public duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practicing in Boston, in said county, do certify that on the 13th day of July, A. D. 1869, I caused to appear before me Warren L. Tower, a witness on behalf of the complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters of issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimeny whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this 15th day of July, annoque Domini 1869.

[L. S.] (Quod attestor) N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

13 JULY, 1869.

FRANCIS E. FAXON, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by to Cha's F. Blake, esq., as follows, viz:

215 1. State your name, age, residence, and occupation.

A. Francis E. Faxon; age 61 years; residence, Boston, Massachusetts; occupation, formerly the shoe business. I am not in any business now.

2. What was your business in '52 and '53, and where did you carry it on?

A. I was a boot and shoe dealer at 53 North Market street.

3. Did you know M'r Smith in '52 and '53?

A. I did.

4. What was he doing in Boston at that time?

A. Well, he came in to sell me an elastic web for Congress boots.

5. Was that the web he now claims as his?

A. That I can't say. I haven't seen M'r Smith for many years before.

And in answer to cross-interrogatories propounded by Benj. Dean, esq., deponent saith:

Cross 1. Have you any means of fixing the date when M'r Smith first came to sell you elastic web, or is it a mere matter of judgment on your part?

A. I have no means of fixing the date, only from my recollection. I am not certain of it, but I think it was. This is the best of my recollection.

Cross 2. Might it not have been as late as 1854?

A. I should think not.

And in answer to direct examination resumed by C. F. Blake, esq., he saith:

6. Was this the first woven elastic fabric for boot gores that you ever saw in this market?

A. It was.

FRANCIS E. FAXON.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth
216 of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 13th day of July, A.D. 1869, I caused to appear before me Francis E. Faxon, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this 15th day of July, annoque Domini 1869.

Quod attestor.

[L. S.] N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

JULY 13, 1869.

W'M R. PERKINS, being duly sworn, doth depose and say in answer to interrogatories propounded to him by Charles F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. W'm R. Perkins; age 60 years; residence, Reading, Massachusetts; I am at present engaged in quarrying granite.

2. How long have you been in that business, and what was your business before it?

A. I commenced it last fall; before that I was in the shoe-manufacturing business.

3. How long were you in the shoe-manufacturing business?

A. I commenced in 1835, and left it 1855.

4. With whom were you engaged in business from 1850 to 1854?

217 A. From '52 to '56 I was with Allay, Choate & Cummings.

5. How long have you known M'r Smith, the complainant?

A. I am quite sure from the spring of '53.

6. When did you first know woven elastic webbing for gaiter boots to be for sale in Boston market, and by whom was it introduced?

A. In 1852, and by M'r Smith, the complainant.

7. When did imported woven elastic webbing for gaiters first come into the market?

A. The first I recollect of was in 1855.

8. Did you buy or use Smith's elastic webbing for gaiters, and if yea, when, and how long?

A. I did; I commenc*ing* purchasing in the fall of '52, and used it two years.

And in answer to cross-interrogatories propounded to him by Benj. Dean, esq., of counsel for respondents, deponent saith:

Cross 1. How certain are you that you first knew M'r Smith in the spring of '53?

A. I was then first using M'r Smith's web. That was the first silk woven web I ever used, and I bought it of M'r Smith in 1853.

Cross 2. Had you before that used any other kind of web for shoe-gores?

A. I had.

Cross 3. What kinds?

A. Goods manufactured by Horace H. Day.

Cross 4. What amount of fabric did you purchase of M'r Smith in '53?

A. I can't state exactly. It was a small amount, being for a peculiar class of goods.

And in answer to direct examination resumed, he saith as follows, viz:

218 9. About how much of this web did you buy at a time?

A. I should think between fifty and one hundred dollars' worth.

10. How often did you buy it?

A. It was fall goods that I used it for.

And in answer to cross-examination resumed, he saith:

Cross 5. How early in the spring did you begin making your fall goods?

A. In April sometimes.

W. R. PERKINS.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 13th day of July, A. D. 1869, I caused to appear before me W'm R. Perkins, a witness in behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this 15th day of July, annoque Domini 1869.

Quod attestor.

[L. S.] N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

JULY 13, 1869.

219 HENRY L. DAGGETT, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Charles F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Henry L. Daggett; age, 56 years; residence, Boston, Massachusetts; occupation, boot and shoe dealer.

2. How long have you been in this business, and where?

A. For forty-two years; in Boston.

3. Were you ever connected with the Glendale Company; if so, when did your connection begin, and how long did it continue?

A. I was. My connection began with the formation of the company, and ended with its dissolution. I think it was formed in 1865, and dissolved or changed, I think, at the close of '66.

4. Were you connected with the Goodyear Elastic Fabrics Company; if so, when did your connection begin, and how long did it last?

A. I was from the formation of the company, which was, I think, in May, 1860, to October, 1863.

5. Were you a director of the company when it took the assignment of M'r Smith's patent?

A. I was.

6. Did you advise the company to take it?

A. I don't think that I did. I don't recollect any conversation wherein I advised the company to take it.

7. Can you give the date of the assignment?

A. I cannot.

8. Was it in the spring of 1861?

A. I should think it was. I've no dates to go by, but should think it was at that time.

9. Do you remember an interview between yourself and M'r Lovering and M'r Smith, on the 19th April, '61, in Cortland street, New York, in regard to this assignment?

A. M'r Smith was in the office in Cortland street. I could not say what time, but should think it might have been in April, '61. His conversation was directed to M'r Lovering, if I remember aright, and
220 not to me. It was with regard to M'r Smith's owning the patent that they were negotiating. I don't know but I should say negotiated, for I think the company had purchased it prior to that day.

10. Was not the assignment executed and delivered on that day?

A. I couldn't say.

11. When did you first know M'r Smith, and where?

A. The first time I ever saw him was at my store in Kilby street; at what time I couldn't say, but it was I think in '51, or soon after.

12. What was your business at that time?

A. Dealer in boots and shoes and shoe findings, &c.

13. When did you first hear of M'r Smith's patent and of his claims under it?

A. The first I ever heard of M'r Smith's patent was in 1861, or it might

have been in 1860. It was after the formation of the Goodyear Elastic Fabrics Company.

14. When did you first hear of M'r Smith's offering his elastic fabric in the market?

A. At the time he called at my store in Kilby street. I moved into Kilby street on the first day of February, 1851, and remained there until the first day of December, 1854, I think.

15. Have you ever paid any money to oppose or resist M'r Smith's patent or his claim under it?

A. To answer that properly I must explain a little. In the fall of 1867 I paid my proportion of the expenses to retain Judge Curtis in behalf of the shoe-finding houses in Boston; but previous to that time I had paid to William Whiting $250 or $300 to procure his opinion of the validty of M'r Smith's patent, then carried to him.

16. Who else paid their proportion to retain Judge Curtis?

(This line of inquiry objected to as immaterial.)

A. Flaxon & Elms; Boyce & Sons; Joseph Dix & Co.; Moors,
221 Skilton & Co.; How Brothers & Co.; Alexander Strong & Co.; Sears & Warner; J. C. Bachelder & Co.; Nichols & Farnsworth; E. K. Butler. I am not certain whether there were any more or not.

17. Who collected the money from yourself and those parties?

A. My impression is, and belief, that it was M'r Hodgdon, now a member of the firm of Faxon & Elms. Whether he was at that time I am not certain.

18. At whose solicitation was this money paid?

A. My impression is that the idea of retaining Judge Curtis originated with Faxon & Elms and Joseph Dix & Co., and that by one of those parties I was requested to contribute my share.

19. How much was raised, and how much did each of you pay?

A. The sum raised was $500, if I remember aright, and the proportion that my firm paid was about sixty dollars, perhaps sixty-three or sixty-four dollars. I am not clear as to the exact amount.

20. Were you a member of the Glendale Elastic Fabrics Company when they employed M'r Dickerson and Brown and Beadle to oppose M'r Smith's patent?

A. I was not.

21. Did you or your firm aid in that opposition?

A. I did not; nor did any member of my firm.

22. Do you know what was done at that time to oppose it?

A. I've no knowledge of what was done—mere hearsay. My interest had ceased in that company, or, in fact, I never had any interest in the company that was in existence at that time.

23. Did you advise or consult with the company, or with any one else, at that time, with regard to that opposition? and, if so, state what passed in such consultations or conversations.

A. I've no recollection of any advisement with the company in any way. I had no interest in the company, and don't recollect giving any advice in any way. My impression is that I was not aware of any opposition till after M'r Dickerson's argument was sent to me.

222 24. Who carried on the opposition before the Patent Office?

A. I've no means of knowing.

25. Have you never heard?

A. I was told that M'r Dickerson and Brown & Beadle were employed by the Glendale Fabrics Company.

26. Who were associated with the Glendale Elastic Fabrics Company in this opposition?

(Objected to, witness stating that he knows nothing about the matter except from hearsay since the event.)

A. That's more than I know.

27. Is there a combination now in the trade in New York and Boston to resist M'r Smith's patent?

A. The shoe-finding houses of Boston, with the exception of Faxon & Elms and W'm S. Boyce & Sons, held a meeting in the latter part of the summer of 1868, and there appointed a committee to procure the opinion of Judge Curtis and others with regard to the validity of Smith's patent; and further agreed that, in case a suit should be brought pending these inquiries, they would share pro rata in defending that suit.

28. Who called this meeting?

A. I don't know.

29. Did the Glendale Company issue a circular, and was it before or after this meeting?

A. They did issue a circular, but my impression is that it was after the meeting was held.

30. Who were the committee appointed by the meeting?

A. Nathan Nichols, Warren Tower, and myself.

31. Does the organization embrace any of the trade in New York; and, if so, whom?

A. It does. I am not able to say whom, but the principal shoe-finding houses, I believe.

32. How much money has been raised here and in New York?

A. Not any.

33. How much has been promised?

A. No sum whatever.

223 34. What has been promised by the trade here and in New York with regard to the payment of expenses?

A. That they would pay their proportion for Judge Curtis's opinion and for defending the suit if any should be brought.

35. Has nothing been paid either in New York or Boston, as yet?

A. I have not been called on to pay anything myself, and am not aware that others have. I mean as associates.

36. Have you paid, or has any one else paid, anything to resist M'r Smith's patents other than as associates? If so, how much?

A. For the purpose of ascertaining whether M'r Smith's patent was valid or not, I have been to some expense to procure information from the other side of the water from manufacturers of long experience. That I had undertaken before this meeting was called, for the purpose of informing myself without regard to anybody else; having stated to these gentlemen that I had been seeking this information for the satisfaction of my own mind, and that at any time when I should find that the evidence was in favor of M'r Smith's patent being valid that I should pay my pro rata of the expense up to that day and then withdraw, for I had no personal feeling or interest for or against the patent, but didn't wish to lend my influence to put it on to the market unless it was valid and good. I am not certain that I made this last statement about my personal interest to the meeting, but have the impression that I did. That was my feeling.

(The foregoing answer, so far as it states what the witness stated to others, and in regard to his own feelings, is objected to as immaterial and not called for by the question.)

37. 36th question repeated.

A. I have not actually paid anything for this information, but have incurred the liability. Ten pounds is the only amount I have had ren.

dered to me from England, and, I think, 250 francs, or about that, from France.

224 38. Who is the treasurer of this organization?

A. I don't remember.

39. Who is the treasurer in New York?

A. I don't think they have one there; there was one, I believe, appointed here, but I have no knowledge who it was.

40. Who are the present committee of that organization?

A. Mess'rs Nichols, Tower, and myself.

41. Has this organization a president and secretary, and who are they?

A. There is no president. I was called to the chair for the meeting, and a secretary was appointed. I think M'r Sweetser acted as secretary of the meeting; then this committee was appointed to procure the opinion of Judge Curtis, and that is the whole organization.

42. Have you conferred with the organization in New York or with the members of it or its officers with regard to this opposition to M'r Smith's patents; and, if yea, with whom and how often?

A. I've not conferred with the organization in New York; I have seen one of its members.

43. Have you advised or solicited persons in the trade here or in New York to join the organization or to refuse to recognize M'r Smith's patents; if so, who and how many?

A. I have not solicited any one to join the organization. I had a conversation with M'r Shattuck, of New York, at my counting-room. He called to inquire if we had obtained Judge Curtis's opinion. I told him that we had not at that time. He was a member, as I believe, of the shoe finding houses that had signed the paper in New York. At another time M'r C. C. Warren, of New York, called at my counting-room also to inquire what was being done with the case of Smith's patent. I told him that the committee here were using means to procure an opinion of the validity of Smith's patent, and that if a suit was brought against him M'r Gifford, of New York, would defend it. M'r Warren, I think, was not a member of the Boston organization. He is a dealer in boots and shoes. Unless this is advice or solicitation I haven't done it.

225 44. Haven't you assured persons in the trade that M'r Smith's suit would never be brought to trial?

A. Not to my knowledge.

45. How many times have you conferred with M'r Warren about this matter?

A. M'r Warren called at my office, as I have stated before, and subsequently I met him at the depot of the Old Colony Road, both being on our way to New York. He enquired how the patent was getting on; my reply was that as yet we had not procured Judge Curtis's opinion, but were gathering up evidence as well as we could. These were the only times I saw M'r Warren.

Adjourned to 1½ p. m.

1½ p. m. resumed.

And in answer to cross-interrogatories propounded to him by Benjamin Dean, esq., of counsel for respondents, deponent saith as follows, to wit:

Cross 1. In entering into the arrangement with the shoe finders, you have testified about, had you any other purpose than to ascertain the truth and validity of M'r Smith's claims for your own guidance?

(Objected to as immaterial and improper.)

A. I had not.

Cross 2. Were you at any expense in procuring information from the Patent Office?

A. I was.

Cross 3. Did you procure the reports of the examiner and the examiners-in-chief?

A. I did.

Cross 4. Will you hand them to the examiner to be annexed to your deposition as exhibits?

(Objected to as incompetent and immaterial.)

A. I will if I have them.

226 Cross 5. Did they influence your mind as to M'r Smith's claims being a proper subject to be legally tested before they should be submitted to?

(Objected to as leading, incompetent, and immaterial.)

A. Yes; they had an influence on my mind.

Cross 6. State whether or not the information you derived from abroad satisfied your mind that M'r Smith was not the original inventor he claimed to have been, but that the fabric he now claims to have invented had many years before been largely manufactured in England.

(Objected to as hearsay, leading, immaterial, and incompetent.)

A. It did.

Cross 7. How many years before did you ascertain that the fabric had been manufactured in England, and to what extent?

(Objected to as incompetent)

A. As early as '47 for shoe gores to a considerable extent.

Cross 8. How much earlier, if at all, for other purposes?

(Objected to as before.)

A. As early as '32.

And in answer to direct interrogatories resumed by C. F. Blake, esq., deponent saith as follows, viz:

46. De bene esse. What was the date of the reports of the examiner and the examiners-in-chief which you say you received?

227 A. Not having the papers with me, I can't say, but my impression is that they were dated in December, '67, and January or February, '68. I am not sure that one might not have been as early as October, 1867.

47. When did you apply for these copies?

A. I am not certain, but it was, I should think, in the fall of 1868. It might have been in January of this present year. It was since the reissue in three parts.

14TH JULY, 1869.

Witness produces Exhibit Daggett, N. A. P., ex'r, to be annexed to this deposition.

HENRY L. DAGGETT.

EXHIBIT DAGGETT.—N. A. P., *Examiner.*

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, S. H. Hodges, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this

fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-third.

[L. S.]

S. H. HODGES,
Acting Commissioner.

No. 3008.

Before the examiners-in-chief, on appeal.

U. S. PATENT OFFICE, *June 18th*, 1868.

Application of William Smith for the reissue of a patent granted to him April 5th, 1853, extended March 28th, 1867, and reissued June 18th, 1867, for an improvement in elastic fabric. Division B.

The board, per Elisha Foote:

228 The applicant appears to have made a decided improvement in rubber or elastic goods. His mode of forming the fabric is found in an old French work, applied to the making of channelled ornamental stuffs, but he claims to have been the first to apply it to elastic fabrics, and thereby to have effected a great improvement in that class of goods.

The examiner has rejected the application on a reference to two specimens of channelled elastic goods that were found in the office with labels older than the applicant's invention.

So many doubts, however, have arisen in regard to these specimens that we have deemed it proper to allow the patent, and give the applicant an opportunity to settle the questions arising upon them in a court of law.

The examiner's decision is accordingly overruled.

ELISHA FOOTE,
S. H. HODGES,
Examiners-in-Chief.

24 U. S. PATENT OFFICE,
Washington, D. C., Jan. 24, 1868.

WILLIAM SMITH (L. W. Serrell, N. Y.:)

SIR: Please find below the decision of the examiner in charge in the matter of your application for a reissue of patent No. , dated the 5th day of April, 1853, for improvement in weaving, and issued to William Smith, and afterwards extended and reissued, filed Sept. 18, 1867. (Div. B.)

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

229 The application above referred to has been considered in view of deposition and argument filed Jan. 23, 1868. Applicant was referred verbally Dec. 14, 1867, for a fabric precisely like his, to a truss, having a card attached to it, marked "Enoch Thomas, New Athens, O. In surgeons' trusses. Pat. Mar. 12, 1840." The fabric on this truss is elastic, and the fibrous warp is green and the weft yellow. Thomas in affidavit filed Jan. 23, deposes that the fabric on his truss was white, and from the positiveness of his deposition a diligent search was instituted and a truss has been found among the rejected models, bear-

ing the name of Enoch Thomas, and which exactly corresponds with his specification, drawing, and affidavit. The model now marked E. Thomas, and above referred to, corresponds in many particulars with the real Thomas model, and was taken for it in 1840 when the card was attached, and it was placed with the patented models. The simple fact that this card of 1840 is attached to this old model is prima facie evidence that it was in the office at that time. On the back of this truss, in ink, appears the following: "Rec'd, without name, Dec. 20, 1838," and to show that this endorsement was made at that time by the proper officer the machinist's record has been consulted, and in vol. 1, Record of Models, second fly-leaf, under head of "List of models received without name," appears the following entry: "Truss (put in draw'r next chases) Dec. 20th," and in same vol. under index letter T, top of page 3, appears the following entry: "Thomas, Enoch, Truss, Dec. 5, 1839." These three endorsements are in the same handwriting and evidently made by the same person.

This unknown model is shown by office record that cannot be disputed to have been rec'd Dec. 20, 1838. The fabric could not have been secured to the truss after it was deposited in the office without taking the model entirely to pieces or sewing through the pads, and the same kind of silk used to confine the leather portions together is used to join the fabric to the leather pad. The fabric on this truss is precisely like applicant's; the elastic warps are held in place at top and bottom by weft threads only; it was made prior to Dec. 20, 1838; where, it matters not, and it is considered to be a good and sufficient reference to applicant's claim. The earliest record date when applicant made a fabric like this is about 1849.

Aside from this fabric referred to, the office yet considers that the looms referred to in office letter of Dec. 7, 1867, will make a fabric like the one claimed. The testimony taken to show that these looms would not or could not produce such a fabric is not conclusive, was not confined solely to the point at issue, viz., a fabric with large warp held in place only by weft, but was confined and directed to certain parts of these English specifications not pertinent to the point at issue. The claim is again refused.

G. W. GREGORY,
Examiner.

7. U. S. PATENT OFFICE,
Washington, D. C., Dec. 7, 1867.

WILLIAM SMITH (L. W. Serrell, New York, N. Y.:)

Please find below a communication from the examiner having charge of Div. B, of the application of W. Smith for reissue of his patent for improvements in weaving, dated Ap'l 5, 1853, and afterwards extended and reissued.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

In the matter above referred to, the office is in receipt of affidavits, arguments, &c., filed Dec. 2, 1867. This application for reissue was filed Sept. 10, 1857, and it was then understood that reissue applications were to be suspended for opposition for thirty days from date of filing, but it was afterward discovered that should there be delay in publishing the claims, the public for whose benefit these applications were suspended

would be deprived of exactly the number of days for opposition intervening the filing and publication. This question was first officially considered in connection with this application, and it was
231 ruled by the office that all reissue applications should be suspended for opposition for thirty days from the publication of their claims. The examiner immediately notified applicant of this decision of the office, gave the 25th of Sept. as the first date of publication of claim in the Scientific American, and that opposition filed up to Oct. 25, 1867, would be considered. An argument or statement was filed in examiner's room Oct. 16, and endorsed by him in pencil, alleging that the fabric sought to be patented in this division of the reissue was not a new fabric, and that any loom for weaving plain cloth, if provided with elastic and non-elastic warps and filling and worked in the usual way, would produce this fabric. This statement has not at bottom a signature, but on the back is the following endorsement: Brown & Beadle, solicitors, &c., of patents, Washington, D. C. Brown and Beadle afterwards filed samples of fabrics with affidavit showing that like fabrics would be produced with movable elastic warps as with stationary elastic warps. The gist of this invention is holding the elastic warps in place by weft threads only in contact with the elastic warps at top and bottom; the specification, however, does not limit the fabric to one produced with an elastic warp, as it says the warps may all be non-elastic; the point of the case is therefore holding warps of a different size in place by wefts only. It was held by the examiner, on personal interview, with applicant's attorney, and it is yet held, that a fabric like applicant's would be produced by uniting with filling a chain of warp composed of separate and non-elastic elastic warp threads, moved after the method of moving warps for plain weaving. Holding this opinion, applicant's attorney was referred verbally to a French patent and to the following English patent: Desgrand 6334, year 1832; Liever 6366, year 1833; Alerton 9186, year 1841; and Brown 10105, year 1844; and he was requested to furnish the office, there being a difference of opinion, with evidence that, from the descriptions in these English patents in particular, a fabric could not be produced first with warps, and secondly with elastic warps,
232 held in place only by weft thread at top and bottom. The affidavits do not come squarely to this sole point at issue, but go to show that the entire fabrics are not precisely Smith's fabric.

It must be remembered that neither the quantity of elastic or non-elastic warps, nor their relative distances apart, enter into the merits of this case, as the warps may be all non-elastic; it is the method of covering warps at bottom and top that is at issue. There is a letter from applicant's attorney, dated Nov. 4th, and received in examiner's room Nov. 15th, asking if any persons are entitled to notice of taking testimony. This letter was answered Nov. 16th, and applicant was informed that the parties opposing Div. B were entitled to notice of taking testimony to be used in that division. According to office rules all testimony referring to this division must be taken after Brown & Beadle, of Washington, D. C., have been duly notified. In answer to the assertion that verbal opinions of rulings have been expressed or made by different parties to different parties, applicant is referred to office rule 142.

G. W. GREGORY,
Examiner.

28. U. S. PATENT OFFICE,
Washington, D. C., June 15, 1868.

WILLIAM SMITH, esq., present:

SIR: Please find below the decision of the examiner in charge in the matter of your application for a reissue of patent No. 9653, dated the 5th day of April, 1853, for improvements in weaving, and issued to W. Smith, and extended and reissued, filed Sept. 10, 1867. Div. B.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

The examination above referred to has been again considered;
233 the appeal to the board of examiners-in-chief having been withdrawn for the purpose of introducing an amendment, in view of a description of a fabric shown in "Description des Arts et Metiers, Etoffes de Soie, vol. 11, pl. 70." The object of the amendment is to restrict the claim to a fabric having an elastic cord warp, the specification being sufficiently broad to include a cord of any material. The amendment does not so limit the invention that the references heretofore cited are not now pertinent, but they, on the contrary, fully anticipate the claim as amended, and it is again necessarily refused.

G. W. GREGORY, *Ex.*

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 13th and 14th days of July, A. D. 1869, I caused to appear before me Henry L. Daggett, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this 15th day of July, annoque Domini 1869.

Quod attestor.

[NOTARIAL SEAL.] N. AUSTIN PARKS,
Examiner, and Notary Public, County of Suffolk.

JULY 14, 1869.

234 JOSEPH DIX, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Charles F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Joseph Dix; age, 54 years; residence, Dorchester, Massachusetts. I have been out of business for a year and a half. Before this time I was in the business of shoe manufacturers' goods in connection with other business for eighteen years at Boston.

2. How long have you known W'm Smith and of his claims under his patents?

A. I should say fifteen years or more.

3. What part have you taken in the opposition to M'r Smith's patents?

A. About two years since M'r Smith came on and made some claims. I, with others, took the opinion of counsel in relation to it.

4. State how many persons there were in this organization of '67?

A. I should say eight or ten. Faxon & Elms, H. L. Daggett, Moor, Skilton & Co.; W'm J. Boyce & Sons were of them I think.

5. Did you ever sign a contract with the Goodyear Elastic Fabrics Company; and, if yea, will you annex a copy of it?

A. I think I did; I annex a copy marked "Dix A."

6. How many persons in the finding trade signed this contract at that time, so far as you know, or one substantially like it?

A. I am not quite sure. I could not swear that there was a paper drawn up, but it's my impression that there was, and that it was signed by some eight or ten firms. As I said, it may have been only a verbal understanding between these persons.

(All the interrogatories in this deposition objected to by counsel for respondents as immaterial.)

And in answer to cross-interrogatories by Benj. Dean, esq., deponent saith:

Cross 1. In your answer to the 3rd interrogatory you say,
235 "About two years since W'm Smith came and made some claims." Were not those new claims and different from those before made by him?

A. I think they were—that they covered more ground.

Cross 2. Whether up to that time his claims of invention, so far as he has stated them to you, had not been for a loom that would weave Union web more economically and better?

A. I do not recollect. My impression is that he had before claimed the patent for manufacturing—for machinery—and latterly, or about two years ago, for the fabric itself.

Cross 3. Was it this change in his claim which caused you to consult counsel?

A. I am unable to state now, not having looked closely into the matter. I can state no more than the general idea I have already expressed.

And in answer to direct examination resumed, by C. F. Blake, esq., he saith:

7. State when you first imported woven elastic webs for boots and shoes into this market.

A. I should say in 1857 or thereabouts.

JOSEPH DIX.

DIX A.—N. A. P., *Ex'r.*

License.

License No. 62.—A. J. Robinson.

OFFICE OF THE GOODYEAR ELASTIC FABRIC COMPANY, NEW YORK.

This agreement, made this twenty-second day of April, A. D. eighteen hundred and sixty-one, between the Goodyear Elastic Fabrics Company, of the first part, and (Joseph Dix and Elias C. Chapin) Joseph Dix & Co., of the second part, witnesseth:

Whereas letters patent of the United States were issued to Charles Goodyear, June 15th, 1844, for a new and useful improvement in India-

rubber fabrics, which were surrendered and reissued December 25th, 1849, and on the 14th June, 1858, were extended for seven years, and on the 20th day of November, 1860, were surrendered and re-
236 issued in two letters patent for new and useful improvements in the art of preparing and in the manufacture of caoutchouc, which letters patent it is claimed that the party of the second part had infringed; and whereas the party of the first part are the owners under such patents of the exclusive right to make, use, and sell all plaited, woven, braided, knitted, shirred, or corrugated goods; made in part or whole of India rubber, such as is described in such letters patent:

Now, therefore, in consideration of the sum of one dollar paid by the party of the second part, to the party of the first part, the party of the first part hereby releases the party of the second part from all past damages for infringing the rights claimed by this company to manufacture and sell and use India rubber fabrics of any sort.

And the party of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that they will not hereafter manufacture, use, or sell, or cause or procure to be manufactured or used or sold, any elastic fabrics made in part or in whole of India rubber, the rights of which are secured to said company under said patents, in any form, until the same shall have been stamped by said company, its successors or assigns, with its stamp, and will not be engaged directly or indirectly in any infringement or violation of the rights which are secured to this company, under said patents, in any form.

And the party of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that they will not hereafter import or procure to be imported any elastic fabrics made in part or whole of India rubber, the rights of which are secured to said company under said patents, in any form, without the license of said company, its successors or assigns, first had and obtained, and that they will not sell or use such goods until the same shall have first been stamped by said company, its successors or assigns, with its stamp.

And the party of the first part does, by these presents, license and authorize the said party of the second part to purchase in Europe
237 or other foreign countries, and import into the United States, elastic fabrics made in whole or in part of India rubber, the rights to use which are secured to said company, and to use and sell said fabrics, when the said party of the second part shall have first caused the same to be stamped with the stamp of this company, and shall have paid to said company the license fees or royalty described in this license. And the party of the first part hereby agrees to stamp the said goods with the stamp of this company when requested so to do by the party of the second part, on the payment of the license fees or royalty described in this license.

And the license fees or royalty which the party of the second part covenant and agree to pay to the party of the first part is ten cents the yard of thirty-six inches on woven or braided elastic gusseting for boots or shoes, of not exceeding five inches in width, unless other widths are agreed upon, imported by said party of the second part, or in the hands of or owned by the said party of the second part, on the day of the date of this license.

And on the arrival of the goods, ten per centum on the cash cost, landed, of all other elastic fabrics, the rights of which are secured to this company by said patents, in any form, imported by the party of the

second part, or in the hands of or owned by the said party of the second part, on the day of the date of this license.

It is also covenanted and agreed that the cash cost, landed, of elastic fabrics other than gusseting for boots or shoes will change whenever Congress shall alter the tariff on importations into the United States, and that under the tariff passed March 2d, 1861, the cash value of one pound sterling shall be considered as six dollars and seventy cents. The same basis of calculation used to fix the cash cost of English currency shall be applied to ascertain the cash cost of the monies of other foreign countries.

And the party of the first part covenants and agrees that no higher rates shall be demanded of the party of the second part during the continuance of the said patents. And the party of the first part
238 agrees to protect the party of the second part against all lawful claims made against them by any other persons owning the rights, under said Goodyear patents, to make and sell the goods so stamped as aforesaid by the party of the first part; and also to defend the party of the second part against all lawful claims made against them for infringing the patent of William Smith, by the use or sale of the goods so stamped by the party of the first part, under this license.

It is the intention of this company to give the same terms to all parties who may take licenses from them, for the same class of goods, and when the terms are changed by diminishing the same, to make the same change for all such licenses, giving six months' notice of their intention so to do.

Until further notice, the terms of this licence are to be as herein mentioned. And the said party of the second part covenant to comply with this agreement, and to pay the license fees for royalty herein provided for.

In testimony whereof the said company has caused their seal to be affixed, and these presents to be signed by their president or their treasurer, and countersigned by their secretary in their behalf, and the party of the second part have hereunto set their hand and seal the day and year above written.

(Signed) W. S. SHATTOCK, *Secretary.*

(Signed) J. M. HOOD, [L. S.] *Treasurer.*

(Signed) JOSEPH DIX & CO. [L. S.]

Executed in presence of—

Witness to signature of party of the first part:
EDWARD B. HOOD.
Witness to signatures of party of the second part:
HENRY M. SNELL.

239 The licensee will, for the present, instruct his correspondent in Europe, to apply to M. H. Allen, No. 93 Wellington street, Leicester, England, for bands, with the stamp of this company, for all small wares.

JOSEPH DIX.

A. J. ROBINSON.

At the execution of a commission for the examination of witnesses between William Smith, Ellen M. Smith, and William Sharp, plaintiffs and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company, de,

fendants, this paper-writing was produced and shown to Joseph Dix, and by him deposed unto, at the time of his examination, before

A. J. ROBINSON,
Commissioner.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 14th day of July, A. D. 1869, I caused to appear before me Joseph Dix, a witness on behalf of the complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this 15th day of July, annoque Domini 1869.

Quod attestor.

[L. S.] N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

240 14TH JULY, 1869—2 p. m.

EZRA BAKER, being duly sworn, doth depose and say, in answer to interrogatories propounded by Cha's F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Ezra Baker; 51 years of age; reside in Lynn, Massachusetts; present business, real estate and insurance broker.

2. Do you know M'r Kibby; if so, how long have you known him?

A. I know W'm B. Kibby, of Washington, and have known him since 1849.

3. Did he ever exhibit to you any English elastic fabric for boot-gores? If yea, when, and describe what it was.

A. He handed to me in the summer of 1849 two pairs of ladies' gaiter uppers, which he stated to me he brought from England in their then present state, having a gore, which I examined, and found it was made of a fine brass spiral spring with a silk covering.

(Questions and answers objected to as immaterial and hearsay. Counsel for respondents decline to cross-examine.)

EZRA BAKER.

Adjourned to 2 p. m., 15th inst.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 14th day of July, A. D. 1869, I caused to appear before me Ezra Baker, a witness on behalf of the complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth, and nothing but the
241 truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this 15th day of July, annoque Domini 1869.

Quod attestor.

[L. S.] N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk.

14TH JULY, 1869.

DANIEL C. HOOD, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Cha's F. Blake, esq., of counsel for complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Daniel C. Hood; age, 32 years; residence, Dorchester, Massachusetts; occupation, commission merchant.

2. Will you look at Exhibit Dix A, annexed to the testimony of Joseph Dix, and state by how many persons in the finding trade it was signed?

A. It was signed by them all.

3. Between what dates?

A. Well, in '61 and '62.

4. Was it signed by any other persons than those in the finding trade?

A. By some importing houses.

5. How extensively throughout the United States was it signed?

A. I can only answer for New England.

6. State how many persons or firms signed it, as nearly as you can estimate.

A. It will be all guess work. It's so long ago, eight or nine years, that I can't tell; perhaps fifteen or twenty persons and firms.

242 7. Please look at exhibit, marked Nichols A, annexed to the deposition of Nathan Nichols, and state how many persons or firms signed that, and when.

A. Well, I should say there was between two and three hundred, about '61 and '62.

(All the preceding interrogatories objected to as immaterial, and not relevant to the issue.)

Cross-examination, de bene esse, by Benj. Dean, esq.:

Cross 1. Please state the history of license, marked Dix A, and whether it was made wholly for the purpose of avoiding litigation with the Goodyear Elastic Fabrics Company, or for any other purpose, and what.

A. A license was granted and signed that the company might derive a revenue from the goods imported by Dix & Co.

Cross 2. Were you at that time the agent of the Goodyear Elastic Fabrics Co.?

A. I was.

Cross 3. Did that company claim the exclusive right to the manufacture, sale, and use of the fabrics imported by Dix & Co.?

A. Yes, sir; they did.

Cross 4. Was said license taken in acknowledgment of and submission to those rights?

A. It was; and M'r Dix was one of the first to take out a license under the company; I mean among the first in Boston.

Cross 5. Did the company have any other object in granting the licenses than to secure the benefit of its patents?

A. None that I know of.

Cross 6. State the object and purpose of Nichols Exhibit A.

(Objected to as being an attempt to state the contents of writings already in the case.)

243 A. The agreement forbid them using any web unless stamped by the company. No man could use the fabric unless he signed that agreement.

Cross 7. This the company insisted upon?

A. They did.

And in answer to direct examination, resumed by Cha's F. Blake, esq., he saith:

8. How long did you continue to be the agent of the company?

A. Four years and a half.

DANIEL C. HOOD.

Adjourned to 2 o'clock p. m.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the 14th day of July, A. D. 1869, I caused to appear before me Daniel C. Hood, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present, by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this 15th day of July, annoque Domini 1869.

Quod attestor:

[L. S.] N. AUSTIN PARKS,
Examiner & Notary Public, County of Suffolk

244 MONDAY, *2d August, A. D.* 1869.

Present: Counsel for respective parties.

CHARLES FERGUSON, being called and sworn as a witness for the complainant, deposes and says:

1. What is your name, age, place of residence, and occupation?

A. Charles Ferguson; 50 years of age; Staten Island; farmer.

2. Do you know the complainant, and how long have you known him?

A. Yes, quite a number of years.

3. Have you ever been in his employ, and, if so, when and in what capacity?

A. I have been in his employ in 1867 and 1868, as clerk.

4. Did you ever, and, if yea, when, visit the finding trade to require them to take licenses under M'r Smith's patents; and, if yea, when and where, and how extensively?

(Objected to as immaterial.)

A. I called upon them, both in 1867 and 1868, in the city of New York, pretty extensively; also in Philadelphia, in Newark, and Patterson.

5. Can you state the names of any of the persons on whom you called?

(Objected to as immaterial.)

A. On Aaron Claflin, several times; Hedges & Powers, Ransom & Co., Benedict, Hall & Co.; Studwell Bro's, Leely & Kennedy, Whiting & Clark, in 1867; on J. T. Whitehouse, Ransom, Baldwin & Fisher; Stinston & Co., M'r Slater, Mulford, Cary & Conklin; D. Torrens & Co., John E. Low, D. Kempner, J. O. Whitehouse, A. J. Bates & Co., Geo. Silver; Rosenheim, Hanan & Richard; Rule & Corlies, C. F. & W. La Salle, Thomas & Blackwell, Smith & Maynard, J. L. Steele, J.
245 Alfred Jones, James Chambers & Co., Porter & Higbie, J. T. & C. Morrow, A. D. Gale, W'm A. Brown, A. S. Richards, T. & F. Kaliski, C. S. Parsons & Sons, Hall & Bristol, J. C. Howard, C. C. Warren, J. F. Davis & Burns, P. Cox, Henry B. Phelps, B. J. Biglow, Henry H. Hudson, Newell Bro's, Wesson & Hunting, Hedges & Powers, M. Keeler & Co., House, Hyde & Co.; called again in 1867 on Mulford, Cary & Conklin; one of the partners said Mulford was in Ohio; would return in a week; don't like to act in the matter till his return, as he was senior partner; on Simmons & Rutter, Cary & Mulford, Emmons Bro's, Crosby Butterfield & Haven; J. Alfred Jones again; W'm A. Brown again; T. & F. Kaliski again; J. T. Whitehouse again; C. C. Warren again; B. J. Bigelow again; Simmons & Rutter again; Emmons Bro's again; L. Bamburger again; Rhodes Shepard, Bigelow & Trask; Baldwin & Fisher again; Crosby, Butterfield & Havens again; Simmons & Rutter again; Aaron Claflin again; D. Kempner, J. W. Edwards, M'r Littman, James M. Burt, Renedict & Hall, Taylor & Morgan, M'r S. Weller, S. D. Gorman & Co., A. Lieson, M'r Levi; M'r S. Weller again; M'r Littman again; James M. Burt again; Crosby Butterfield & Haven again; Weller & Miller, Chapin, S. D. Gorman. In 1868 I called on J. O. Whitehouse again; A. J. Manly, Rosenheim, C. S. Parsons & Sons, D. T. Torrens & Co., Newell Bro's, Studwell Bro's, Schulein Sulzbacker & Co.; same firm again; Eli & Kennedy, Whiting & Clark, M. & L. Stock, James Chambers & Co., Hedges & Powers, J. F. Davis, Wesson & Hunting, S. Rothchilds Bro's; Leland, Warren & Clarendon; Powell Bro's & Co., Sears & Curtis, Mabie Murray & Morgan; Benedict, Hall & Co.; Porter, Day & Co.; Cammyer & Mason; House, Hyde & Co.; W. A. Ransom, McCoun & Showmaker, W. W. Gilman, A. S. Richards & Co., C. C. Warren; Whitehouse again; T. & F. Kaliski, G. T. & C. Morrow, J. Parsons & Co., J. C. Howard, P. Cox, Hanan & Richards, F. Weil, J. Alfred Jones; Steele, Noble & Co.; J. H. Conreich & Bro.; Bigelow; the president of the Bay State Shoe and Leather Co.; Wershing, O. G. Corbett; Benedict, Hall & Co.; Edwin C. Burt, H.
246 B. Claflin & Co.; E. C. Burt again; Dubois, McGoverin & Co.; Baldwin & Fisher, Currier Sherwood & Co., C. W. Jones; Benedict, Hall & Co. again; C. V. White, J. Whitmarsh, j'r; House, Hyde & Co. again. That is all in New York.

6. State whether or not you called on the trade in Philadelphia, Newark, and Patterson as thoroughly as you did in New York?

(Objected to as immaterial.)

A. I think I did in Philadelphia; I had a list of the principal names in Newark and Paterson; I may say I did.

7. State whether or not in 1867 you found among the trade a combination to resist M'r Smith's patent.

(Objected to as immaterial and incompetent.)

A. Several of them informed me they had subscribed money to C. C. Warren to defend suits; one suit Warren told me cost him $1,500 for resisting the patent.

8. State what passed between you and Hedges & Powers in regard to the resistance of Smith's patent.

(Objected to as immaterial and incompetent.)

A. I called upon them with reference to take out license under M'r Smith's patent. I stated to them they would be obliged to stamp the goods in the store. In reply they said before they would do so they would resist to the last. I had other conversations with M'r Hedges. He then said he would give the names of all the manufacturers from whom he received goods, but could not submit to have any goods stamped they had sold, and the stock on hand. I had another interview with one of the partners, M'r Lane I think; M'r Hedges was present. He suggested a new idea, that if M'r Smith relinquished all claims upon them to the present time, their customers as well as themselves would
247 take out license. It struck me as very favorable at the time. I came back to M'r Smith and reported. I then persuaded M'r Smith, as an outside party, to accept the proposition; finally after an interval of several days I returned to Hedges & Powers with M'r Smith; M'r Lane and M'r Smith had an interview, and they came to some understanding; I then called a few days afterwards to consum'ate that agreement; they then refused to enter into any agreement, and shewed me a circular marked Ferguson Exhibit A, purporting to be a printed circular issued by the Glendale Manufacturing Co., and our negotiations then ended.

9. Will you please state why you called so often on the different parties?

A. Sometimes they would put me off because their principal partners were not in and told me to call again; some promised to attend to it, giving different excuses, and that was the principal reason for my calling so often.

10. State whether or not any of them promised to take out licenses.

(Objected to as immaterial and incompetent.)

A. Yes, but they gave various excuses for not doing so; some because of the circular (Exhibit A); others refused to take them on the ground that if they did so they would be prosecuted; others, that M'r Smith was not the proper holder of the patents, or that the patent was not valid; some urged that the manufacturers ought to take out the licenses.

Cross-examined M'r Dean, de bene esse:

Cross 11. In you' canvassing did you call upon all dealers both great and small?

A. I did; principally, however, upon the wholesale men.

Cross 12. Have you a copy of the license which you proposed?

A. No. I can produce one, and will.

Cross 13. Does the license state the terms and demands made on the dealers?

248 A. Yes; my impression at the time was that they were full and meant to cover the case.

Cross 14. What royalty did you demand?

A. Three or five per cent. I think, but am not positive; it may have been higher.

Cross 15. Three or five per cent. on what?

A. I think per yard on this webbing. I am not sure of that, but in Hedges & Powers' case the stamps were to be put on the shoes.

Cross 16. What per cent. did you demand on the shoes which had the elastic gores?

A. I don't remember.

Cross 17. Did you make any demand for a royalty on shoes that had elastic gores in them of woven webbing, and if yea, what?

A. The license will explain all that matter; they are on printed forms. I think the license claimed a royalty on all goods manufactured after a certain period; the period I don't remember; it would now be guesswork with me; the license will show.

Cross 18. Who of all the persons you called upon declined to take a license, stating as a reason for the declination that they were afraid of a prosecution?

A. Hedges & Powers was one, and some others.

Cross 19. What others?

A. I don't really remember. I can't just think of them without my book. I might refresh my memory.

Cross 20. Have you now your book, and will you mention any instance in which there is in it a record of such a reason?

A. There may or may not, but I am positive that such an objection was made from the last paragraph of circular (Exhibit A); that was the objection they raised.

Cross 21. Refreshing your memory from your book, can you point out any other instance than that of Hedges & Powers?

A. I don't know whether I can from the book or not, but I recollect there were quite a number of objections raised on that point.

249 Cross 22. Will you look at your book and see whether there is in it a mention of any instance of the kind, and state every such instance?

A. I see here that at my last interview with Hedges & Powers it states the particulars of my interview, but does not state that fact. I find that the circular bears date the same day, 23d October, 1868. I think I called in the afternoon of that day. There was a query in my mind how it could be dated in Massachusetts on that day, and they have it then.

Cross 23. Pending the last interrogatory did not M'r Smith call attention to the fact that the circular was not issued until your book had closed?

A. He did here to-day, a while ago. I think I heard him make that remark a while ago.

Cross 24. Was it not after you had begun to answer the 22d interrogatory?

A. No matter what M'r Smith suggested. I stated upon my own best recollection.

Cross 25. Will you be kind enough to answer the question whether the remark of M'r Smith was not made after you had begun to answer the 22d interrogatory?

A. He made the remark, but I am not swearing to M'r Smith's hearsay. I am swearing to my own knowledge. I mean his statements, not hearsay.

Cross 26. Do you decline to answer the question whether the remark was not made after you had begun to answer the 22d interrogatory?

A. I stated already that M'r Smith said so during my cross-examination.

Cross 27. Read the 22d interrogatory and answer if it was not after that interrogatory was put?

A. I can't particularise the interrogatory, but I know the suggestion was made.

Cross 28. Had I not before cautioned him against making remarks, saying that if he did I should have to call attention to it on the record?

(Objected to as not being the proper mode of bringing to the
250 attention of the court the alleged conduct of the plaintiff, and as not being matter for cross-examination.)

A. I don't recollect you speaking about the record, but you made the remark to M'r Smith and his counsel that he must not interfere with the witness.

Cross 29. Whether in stating in your direct testimony the names of the persons you called upon you read them from the book?

A. Some from memory, some I referred to my book for.

Cross 30. Whether, except a few of the first ones, they were not taken from the book?

A. I read the firm name off the books, but not the substance of the conversations had with them; that I stated from memory.

Cross 31. What is the last entry on your book of any call upon any firm or person in New York?

A. I think the latter part of October, 1868.

Redirect:

Redirect 32. State whether or not you called on other parties in New York, not entered in your book and not named in testimony, and whether such calls were many or few.

A. I won't say positive. I might have omitted some, but the majority, I think, are in the book.

Redirect 33. Did not M'r Smith instruct you when you called on the trade to tell the parties to come to him and settle and take licenses?

(Objected to as incompetent.)

A. That was the object of my visits, to come to M'r Smith and take out licenses.

Redirect 34. Was not the royalty spoken of, 3 to 5 cents a pair on the boots, and not 3 to 5 cents a yard on the webbing?

251 A. I think it was from the fact that webbing comes in large pieces.

CHAS. FERGUSON.

Subscribed and sworn to before me, this 2d day of August, 1869.

JOHN A. SHIELDS,
Examiner, etc.

FERGUSON EXHIBIT A, R. E. S.

CIRCULAR.

To Purchasers of Gusset Web:

We having been informed that one William Smith claims to have a patent for such elastic goods as have been manufactured by us and others, and that he to some extent has annoyed parties who are selling or using said goods, take this mode of informing the trade that we have had the subject investigated by able counsel, and are advised that the claim is without foundation and cannot be sustained, and that we intend to protect ourselves and our customers against any such claim; and, therefore, request that any communication which shall be sent to any of them be immediately transmitted to us, to enable us to take such measures as may be necessary to fully protect them.

We have also been informed that some parties have allowed such goods to be so stamped or marked as to signify that they come under the patent of said Smith.

We desire to say that we do not consent to or concur in any such stamping or marking, and that the fifth section of the act of Congress of the 29th of August, 1842, provides a heavy penalty against stamping or marking unpatented articles with any word or words signi-
252 fying that they are patented; which penalty is a fine of one hundred dollars for each offence; that is for each article or specimen stamped.

GLENDALE ELASTIC FABRICS COMPANY,
E. H. SAWYER, *President.*

EASTHAMPTON, MASS., *Oct.* 23, 1868.

BENJAMIN H. CARY, being called and sworn as a witness for the plaintiff, deposes and says:

1. What is your name, age, residence, and occupation?

A. Benjamin H. Cary, 34 years old, Brooklyn, L. I., merchant.

2. Are you a partner in the house of Mulford, Cary & Conklin; and, if so, how long have you been such partner?

A. Yes; between four and five years.

3. Look at exhibit marked Ferguson Exhibit A, R. E. S., and state whether you or your firm ever received such a circular; and, if so, when.

A. I think we received a circular of that kind; cannot state when.

4. State when, as near as you can.

A. Within a year or so.

5. Have you received other circulars from the Glendale Company relating to the same subject matter?

A. We may have done so, but I am not aware.

6. Has your firm ever subscribed money to oppose M'r Smith's claims or patents; and, if so, when, and how much?

(Objected to as immaterial.)

A. We subscribed $50 on one occasion. I believe that was the amount stated in the paper we signed. It was within 12 or 18 months.

7. Who brought you the paper and requested you to sign?

A. I think Edward W. Dean.

253 8. To whom did you pay the money?

A. I believe Edward W. Dean.

9. Have you ever collected any money from others for that purpose?

A. No.

B. H. CARY.

Subscribed and sworn to before me, this 2d day of August, A. D. 1869.

JOHN A. SHIELDS,
Examiner, etc.

JOHN ARMSTRONG, being called and duly sworn as a witness for the complainant, deposes and says:

1. What is your name, age, residence, and occupation?

A. John Armstrong, 47 years old, 115 Madison avenue, leather and shoe findings.

2. What is the name of your firm, and how long have you been connected with it?

A. M. Armstrong & Sons; been connected with it upwards of 25 years.

3. Look at exhibit marked Ferguson Exhibit A., R. E. S., and state whether you ever received a copy of it, and from whom, and when.

A. I have a copy of it in my possession, but do not know by whom it was sent, or when.

4. Did any one ever call upon you to converse with you in regard to this circular; and, if so, when, and who was it?

(Objected to as immaterial and incompetent.)

A. I don't recollect.

5. Did any one ever call upon you in regard to M'r Smith's patents or claims; and, if so, who, and when?

(Objected to as immaterial.)

A. I can only recall three persons; one was M'r Bailey; don't
254 remember when; M'r Edward W. Dean a year or more ago, and M'r Thomson, of the firm of Johnson & Thomson, of Boston, some months ago.

6. State what passed between yourself and M'r Thomson.

(Objected to as immaterial.)

M'r Thomson's object in calling on me was, I think, to ascertain the reason why our firm were paying royalty to M'r Smith, while most of the other houses refused to do so. I told him that we were of course unacquainted with the merits of the case, but that M'r Smith had shown my brother Mathew the patent papers, and he concluded that it would be the simplest course for us to pay the royalty demanded by M'r Smith, and thus avoid any connection with the suits. M'r Thomson said the parties interested in Boston were well satisfied that M'r Smith's claims were untenable, and that they intended to contest them to the end. I then said to him that our position with M'r Smith was such that we could not consider any propositions to join with himself and other parties. M'r Thomson recognized the justice of this, and said he would not say anything more about it. In the course of the conversation M'r Thomson spoke of one or more houses in Boston who had agreed to pay royalty to M'r Smith, but seemed at a loss to account for their action, and asked me if I could give him any light on the subject, which I was unable to do.

7. State what passed between yourself and M'r Dean.

(Objected to as immaterial and incompetent.)

A. I had but a few minutes' conversation with him, and purposely avoided discussing the matter. M'r Dean in a very general way spoke of the worthlessness of M'r Smith's claims to the patent; that is about all.

8. After your conversation with M'r Thomson, did you continue to pay royalty to M'r Smith?

A. Yes.

255 9. When did you cease to pay them, and why?

A. I do not know that we have ceased to pay.

Cross-examined de bene esse. M'r Dean:

Cross 10. Did not M'r Thomson express the opinion that the claims of M'r Smith were of such a character that it was the duty of those connected with the trade to have the validity of them tested?

(Objected to as leading.)

A. He certainly did so express himself, but he said that there was a strong opposition organized, and that he had no doubt the patents would not be substantiated.

Cross 11. Where is your license, and what are its terms?

A. I have looked for the license since I was here, a few days since, but have not been able to find it. We paid royalty 2 c. per stamp; 5 stamps to go with each yard of goods sold.

The witness says he wishes to add to his answer to the 9th interrogatory, as follows:

Just before leaving the store this morning, our bookkeeper said he thought we were not paying M'r Smith a royalty now. I told him I had not heard of any change.

Redirect:

Redirect 12. Are you still selling M'r Smith's web*b*?

A. I don't know what web*b*s we are selling. I don't attend to that part of the business.

Redirect 13. What part of the business do you attend to?

A. Financial part.

Redirect 14. Did not your brother give this matter of Smith's webbing in your charge?

256 A. He referred the settlement of the royalty to me in consequence of a dispute we had with M'r Smith about one or two of his charges.

Recross:

Recross 15. What was the dispute?

I understood M'r Smith to say that he would not charge royalty after a certain date, and subsequently he insisted upon our paying it, and the dispute was between the two times when he stopped it and recommenced it.

Recross 16. Do you know whether the web*b* you sell is described in M'r Smith's patent?

A. No, sir; I do not know.

Recross 17. Do you know whether the web*b* you paid royalty on was described in M'r Smith's patent?

A. I do not know.

Recross 18. Did you take the license and pay the royalty after an examination into the merits of M'r Smith's claim, or for the purposes of peace and to avoid the inconvenience of litigation?

A. We had not examined into the merits of the claim. We were satisfied that he had some patent, whether it related to the goods we were selling we did not know, but M'r Smith assures us that it did, and we decided to pay him a royalty, partly for the sake of avoiding the trouble of a law-suit; the other part was that he was an old friend.

Redirect 19. Did not your brother examine into the merits of M'r Smith's claim?

A. I think no more than by a cursory examination of the patent papers brought by M'r Smith.

JOHN ARMSTRONG.

Subscribed and sworn to before me, this 2d day of August, 1869.

JOHN A. SHIELDS,
Examiner, etc.

257 LEWIS BAILEY, being called and sworn as a witness for the plaintiff, deposes and says:

1. What is your name, age, residence, and occupation?

A. Lewis Bailey; 46 years old; reside in W. 84th street, New York, near 8th avenue; dealer in shoe-manufacturer goods.

2. In the year 1868, did anybody call upon you from Boston? If so, state who, when, and the conversation which passed.

(Objected to as incompetent, irrevelant and hearsay.)

A. Yes, I think it was in 1869, a person spoke to me in reference to

this elastic rubber question, asking me if I would join them in defence against William Smith. I objected to do so, inasmuch as I had all through the matter favored M'r Smith, saying that if he had any right to the patent I would be glad if he would get his rights. He stated to me that his object was to ascertain fully whether or not he had the right to this patent.

3. Who was this person?

A. I do not know him. He was from Boston. He said so.

4. State whether or not he said anything to you about you being liable to suits, and about his bringing suits against you. And if yea, what was it?

(Objected to as irrevelant and immaterial.)

A. I think he said that if I sold those goods under M'r Smith's patent, and the patent was not good, that I would lay myself liable, or something to that effect.

5. Were you a licensee of M'r Smith?

A. I was at one time.

6. What time in 1869 was this conversation?

A. I can't say.

7. When did you cease to be the licensee of M'r Smith?

A. When my license ran out; I think it was to run one year from April, 1867, or April, 1868; can't tell which.

258 8. Have you the license and will you produce it?

A. I have not got the license.

9. Was this conversation before or after the license expired?

A. I don't know.

10. When did you pay your last royalty?

A. I paid but one license, and after that I bought stamps until M'r Smith notified me that my license would be discontinued.

11. When did you buy the last stamps?

A. I can't say, as I left it to one of the clerks to buy them as wanted.

Cross-examined:

Cross 12. What was the occasion of M'r Smith notifying you of the discontinuance of your license?

A. I don't know. M'r Smith did not state in his notification why he did it.

Cross 13. State all that he said, and all that occurred with reference to it.

A. I think M'r Smith called on me and stated that unless I took out a license from him for the selling of the elastic rubber that he would place an injunction upon my selling it, or that he would sue me, or words to that effect. The conversation between M'r Smith and me was to the effect that I would have no objection to taking out a license, and soon after did so.

Cross 14. What occurred? and state all that was said when the license was discontinued.

A. I don't remember having any conversation with him concerning it, except so far as this: he told me that he was stamping the elastic web then and that I could buy it of him or some Boston houses already stamped.

Cross 15. What Boston houses?

A. I disremember the names, although he told me at the time.

Cross 16. Were Faxon, Elms & Co. and Boise the names?

(Objected to as leading.)

259 A. I think Faxon, Elms & Co. was one of the names.

Cross 17. Do you mean to say that M'r Smith at last declined to give you a license and to sell you stamps, limiting you to the purchase of webs of him or the Boston houses?

(Objected to as leading, and as calculated to mislead the witness.)

A. No, sir.

Cross 18. State more specifically what you wish us to understand by your answer to question 14.

A. I don't think anything further than that occurred. I was surprised at receiving the notice that he had discontinued my license.

Cross 19. Was that notice in writing, and will you produce it?

A. I think I destroyed all those papers.

Cross 20. D d you buy any stamps after getting that notice?

A. No.

Cross 21. Why not?

A. Because M'r Smith informed me that I could buy the goods stamped with his name, etc., which I thought to be preferable for my customers, inasmuch as they seriously objected to putting paper stamps upon their shoes.

L. BAILEY.

Subscribed and sworn to before me this 2d day of August, A. D. 1869.

JOHN A. SHIELDS,
Examiner, etc.

ADOLPHUS M. LA FOY, being called and duly sworn as a witness for the complainant, deposes and says:

1. What is your name, age, place of residence, and occupation?

260 A. Adolphus M. La Foy; 32 years old; Newark, N. J.; bookkeeper for Bailey & Co.

2. Do you know who was the person from Boston who, as testified by M'r Bailey, called on him about M'r Smith's patent?

A. I do not know. I was in Boston some few days or weeks previous to that time, and called at his place of business among other places, and when he called on M'r Bailey I recognized him as a Boston merchant, but could not remember his name.

3. Where was that place of business?

A. I think in Pearl street.

4. What was the name of the firm where you saw him?

A. I don't know.

5. Did you have any conversation with him about M'r Smith's patents?

A. No, sir.

6. Were you present at the interview between this Boston merchant and M'r Bailey?

A. I was.

7. State what passed between them.

(Objected to as immaterial.)

A I can't do it. The substance of what I heard was that he wanted M'r Bailey to sign some paper agreeing to test the valdity of M'r Smith's patent.

8. What else did you hear the substance of?

A. That was all.

A. M. LA FOY.

Subscribed and sworn to before me this 2d day of August, A. D. 1869.

JOHN A. SHIELDS,
Examiner, etc.

LEOPOLD WISE, being called and duly sworn as a witness for the complainant, deposes and says:

261 1. What is your name, age, place of residence, and occupation?

A. Leopold Wise; 34 years old; 334 West 20th street, New York; merchant of the firm of L. & M. Wise & Co.

2. Did you ever have any interview with C. C. Warren, or any conversations with him with regard to M'r Smith's patents? If yea, state what they were.

A. I had. He called at our office one day in 1867, for the purpose of getting some money in order to defend a case, I believe about goreing; that's all I know about it; whereupon I gave him, I don't remember the exact amount, and some short time after he refunded part of that money; that was all the conversation I ever had with M'r Warren regarding this matter.

3. Did you have a conversation last year, about October, with M'r Smith about taking out a license?

A. No.

4. Did M'r Warren come to your place in October, 1868, about this matter?

A. No, sir; not to my knowledge. I know he didn't.

LEOPOLD WISE.

Subscribed and sworn to before me this 2d Aug., A. D. 1869.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to 10½ a. m. to-morrow.

TUESDAY, *3d August*, 1869.

Present, counsel for respective parties.

EDWARD W. DEAN, being called and duly sworn as a witness for the complainant, deposes and says:

1. What is your name, age, place of residence, and occupation?

A. Edward W. Dean; 40 years of age; reside in Rutherford Park, New Jersey; merchant.

2. What is the name of your firm and how long have you been connected with it?

262 A. Stoddart, Lovering & Co. I have been connected with it about 20 years, and have been resident partner in New York city since January, 1866.

3. Was your house ever the agent of the Glendale Co.; and, if so, when did your agency begin and when did it cease?

A. It began several years since; I can't say when, and we are now agents for it.

4. Did your house, as such agents, sell the Glendale elastic webbing?

A. Yes.

5. Do you know M'r Smith, the complainant; and how long have you known him?

A. I never knew him. I have known of him; never spoke to him till the other day.

6. Are you acquainted with M'r Smith's patents, and with his claims under them; and how long have you been so acquainted?

A. I am not acquainted with them. I have heard about them in a general way for several years.

7. Have you taken any part in forming a combination of the trade to resist M'r Smith's claims; and, if so, what?

A. I received money some two years ago to aid in defending suits brought against certain parties here.

8. State, as nearly as you can, when you received this money.

A. Two years ago this summer.

9. From how many persons did you collect this money, and how much did you collect?

A. I should say 12 to 15, and about $1,400.

10. To whom did you pay this money?

A. E. N. Dickerson, W. C. Traphagen, Brown & Veadle, sundry bills for printing, telegraphs, &c.

11. At whose request was this money paid you?

A. A paper was passed round among the trade, signed, and when I wanted money for this purpose I called for it.

12. By whom was this paper prepared?

A. I prepared the paper, at the request of sundry and divers persons, merely writing a heading of some three lines, which was passed round.

263 13. Give the names of as many of the parties who signed this paper as you can.

A. Simmons & Rutter, Weller & Miller, L. Bamburger & Co., Niel McCallum, Mulford & Cary, E. Godfrey & Sons, A. Studwell & Co., Gillespie, Studwell & Co., C. C. Warren, Joseph Beasley, John Slater, Shattuck & Wyckoff, M. H. Chapin & Co., J. Leventritt.

14. Were Mulford & Cary named by you the house now known as Mulford, Cary & Conklin?

A. Yes.

15. Did any other parties than those who signed the paper aid by money or by advice in the opposition then going on to M'r Smith's patent; and, if so, who were they?

A. A few parties in Philadelphia, represented by either Isaac Barton & Co., or their successors. I don't know the names of the Philadelphia parties.

16. Was the opposition at that time directed to the reissue of the patent to M'r Smith?

A. I can't say, as I do not understand the law points.

17. Was the pamphlet you now hold in your hand, entitled "Objections to reissue of patent of William Smith, by Brown & Beadle, solicitors, dated New York, 1867," one of the papers in that case?

A. It was the result of that case.

18. Who went with you to solicit subscriptions?

A. I think I did not solicit any subscriptions, but aided in the collection of them.

19. Who acted for the parties opposing the reissue in retaining and consulting counsel and obtaining witnesses, &c.?

A. I do not know. I should say E. H. Sawyer, president of the Glendale Co. and treasurer of Nashawanneck Co. I notified M'r Dickerson that his services were wanted.

20. What part have you taken since 1867 in the opposition to M'r Smith's patents?

A. None.

21. Have you advised any persons to resist M'r Smith's patents, or to refuse to submit to them, since 1867; and, if so, who?

264 A. Only in a general way. I have said that I considered the matter settled by the answer put in in 1867. I refer to the argument of Brown & Beadle before the Patent Office before referred.

(All the foregoing testimony of this witness was objected to in season as immaterial and incompetent.)

Cross-examined M'r Dean:

Cross 22. How came you interested in opposing the reissue of M'r Smith's patent, and what circumstances led to it?

A. Parties with whom we had business relations were receiving circulars from M'r Smith (the purport of which I do not exactly remember), but so annoying in their character as to disturb them in the peaceful prosecution of their business, and they asked what they should do. Finally some parties were sued, and they proposed to unite for mutual defence, and asked me to take charge of the matter. The trade had been so stirred by Smith's circulars that they were desirous of knowing whether they had any rights or not.

Cross 23. What classes of persons interest' in the trade had received these circulars?

A. All grades; from a small shoemaker to a wholesale dealer.

Cross 24. In the opposition to the reissue of M'r Smith's patent, in which you interested yourself, as you have stated, was there any effort made to accumulate evidence of facts to lay before the Patent Office, or was it left with lawyers that had been employed to be dealt with as a matter of law?

A. As I understand it, wholly a law question. There was no collection of any testimony, so far as I know.

EDWARD W. DEAN

Subscribed and sworn to before me this 3d day of August, 1869.

JOHN A. SHIELDS,
Examiner, &c.

265 JOSEPH BEESLEY, being called and duly sworn as a witness on behalf of complainant, deposes and says:

1. What is your name, age, place of residence, and occupation?

A. Joseph Beesley; 55 years old; Flushing, Long Island; boot and shoe dealer.

2. Do you know M'r Smith, the complainant, and how long have you known him?

A. Yes; I have known him some 15 years.

3. Do you remember calling on M'r Smith, in 1867, in regard to taking out a license? And state what passed at the interview.

(Objected to as incompetent.)

A. I received a notice in the way of a summons for suit, and I went down to see M'r Smith, in Cliff street. He was not in. Parties there said they would send him up. He called on me the next morning. I think the conversation commenced by my asking why he had sued me. He then stated he had notified me; by a circular, I suppose. I told him I had not seen one. I think he said he had sent them by mail. Then I asked him his demand for his license. I think he told me three cents per pair for what I had manufactured from a certain date; I think February or April, 1867. I think he also said I must pay him that for what was in the stock. I then asked him if he had treated the whole trade the same. He replied no, but he intended to do so. I said, "You

say you will collect from every one who manufactures this tariff?" He said he would. I then said to him, "M'r Smith, I don't manufacture an article myself with elastic tops," and named to him the parties who manufactured for me, saying, "If you collected of all, you would be paid twice if you collected of me"; so I declined to take a license.

4. Did you afterwards agree to take a license?

A. No.

5. Were you ever afterwards in M'r Smith's office?

A. Never.

266 6. Did you in 1867 sign a subscription paper to oppose M'r Smith's patents?

A. I signed a subscription paper which was to defend a suit he had commenced against me.

7. Who brought you this subscription paper?

A. I think it was brought by one of the firm of Weller & Miller; I think M'r Weller.

8. Do you know of other parties going round to solicit subscriptions?

A. I do not know.

9. How much did you subscribe?

A. I can't say how much; some $50 or $60.

(The foregoing testimony of this witness was objected to in season as incompetent and immaterial.)

JOSEPH BEESLEY.

Subscribed and sworn to before me this 3d day of August, 1869.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned by consent till due notice.

267 Circuit court of the United States, district of Massachusetts. In equity.

WILLIAM SMITH
v.
GLENDALE ELASTIC FABRICS CO.

The depositions of witnesses on behalf of complainant in the above suit, taken by William Grier Hibler, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, etc., at his office, No. 435 Library street, in the city of Philadelphia, and State of Pennsylvania, on the tenth day of August, A. D. 1869, and thereafter from day to day, pursuant to adjournment.

Present, William Smith, the complainant.

WILLIAM CURRY, being duly affirmed, deposes as follows:

1. What is your name, age, residence, and occupation?

A. My name is William Curry; am aged 63 years; I reside at No. 505 Pine street, in the city of Philadelphia; am a storekeeper by occupation—a trimming and variety store.

268 2. Please designate where that store is; how long you have occupied it, and how long you have been a dealer in suspenders.

A. The store is at 208 Chestnut street, the new number; formerly No. 50. I think I have occupied it twenty-two years, maybe twenty-three years, and I think I have been a dealer in suspenders since 1830, but not always in this city.

3. Please state where you resided, and whether you delt in suspenders in any other place, and what place, and how long you dealt in them before you came to this city.

A. I commenced in 1830, in Trenton, New Jersey, and remained there till about 1843.

4. Please state, after you left Trenton, where you conducted business before you came to 208 Chestnut street.

A. I conducted business in Arch street, above Third, on the north side, and I removed from there to northeast corner of Chestnut and Bank streets, and from there to 208 Chestnut street.

5. Please state of whom you bought suspenders, of what firms, while you were a resident of Trenton, as near as you can recollect.

A. I think I bought of Joseph Brown, in Bank street, of Thomas Mellor, in Arch street, at that time, and of Kirkland & Mansfield, and Hall, and others whom I don't clearly remember.

6. Did you continue to buy of the same firms after you came to Philadelphia?

A. I think I did.

7. Did you continue to buy of Kirkland, Mansfield & Stone, after M'r Kirkland retired from the business?

A. I think I did, but am not sure.

8. Do you recollect the year that M'r Kirkland retired from the business, and M'r Stone came into the firm?

A. Clearly I do not, but think it was twenty to twenty five years back.

269 9. Do you recollect the year Mansfield, Hall & Stone suspended business in Philadelphia?

A. I am of opinion that it was about twenty-three or twenty-four years ago.

10. Do you recollect the time when woven elastic suspenders were in the market in Philadelphia for sale?

A. I think over twenty years ago; but how much over I can't clearly remember. I can't remember more clearly than that.

11. Did you buy woven elastic suspenders from Kirkland, Mansfield and Hall?

A. I think I did, but am not sure.

12. Can you mention no one definitely from whom you bought woven elastic suspenders between 1845 and 1850?

A. I think I bought of F. V. Krug & Co., and others, in that time.

13. Did you ever purchase any web similar to Exhibit No. 8, W. G. H., between 1845 and 1850; and, if so, from whom?

A. I may have done so, but don't clearly remember from whom.

14. What do you mean by "may have done so"; can you say that you did so, or did not do so?

A. As I said before, I think I did, but am not clear about it, as they changed them so often in style.

15. Can you recollect whether you bought any in that time with the gum bare in the selvedge when stretched?

A. I think I did, but am not certain.

16. Did you ever purchase any goods similar to Exhibit No. 3, W. G. H., between the years 1845 and 1850?

A. I have purchased goods resembling this, but cannot say the time.

17. Is it because it has the curled edge that you think you purchased it?

270 A. The general features of this No. 3, W. G. H., with the edge together, reminds me of the goods I purchased resembling this exhibit.

18. What do you mean by its general features? Do you mean its being of a block pattern, and the striping of its colors?

A. I mean the features of the pattern and the fabric being like what I have sold.

19. Explain what you mean by the fabric, please.

A. The material as manufactured; not the coloring, but the material itself.

20. Do you mean by the material the cotton and the rubber, independent of the manner of weaving it?

A. I mean both the cotton and gum of which it is made.

21. Did you ever buy or sell any woven elastic goods corrugated or plated between the rubbers, somewhat similar to Horace Day's cemented goods?

A. I have bought and sold suspenders corrugated by weaving resembling Horace Day's goods—corrugated goods.

22. State from whom you purchased those goods.

A. I think of F. V. Krug, and others, and Wilcox and Brother; I don't clearly remember that I dealt with Wilcox and Billings; I can't place this as to the year.

W. CURRY.

Affirmed to and subscribed before me this 10th day of August, 1869.

W. GRIER HIBLER,
U. S. Commissioner.

FRANCIS SMITH, junior, being duly sworn according to law, deposes as follows to interrogatories propounded by William Smith, com-
271 plainant:

(At this point in the examination of the witnesses Benjamin Dean, esq., of counsel, with defendants, comes in.)

1. What is your name, age, residence, and occupation?

A. My name is Francis Smith, junior; I am fifty years of age; I reside at No. 817 Lombard street, in the city of Philadelphia; and by occupation, now, I am visitor of the poor, for the Guardians; I was formerly a suspender-manufacturer at No. 28 South Fifth street.

2. How early did you become a manufacturer of suspenders?

A. In 1840.

3. Did you import any suspender webbing as early as 1840 from England or elsewhere?

A. No, sir.

4. Please look at Exhibit No. 9, W. G. H., and see if you recognize it as an imported web.

A. I can't say whether it is or no. This kind of web we used to buy from John Thornley.

5. Look at No. 10, W. G. H., then.

A. This I bought for imported web, from John Thornley, too.

6. Would not this imported web come sometimes as silk or silk and cotton, or stripes sometimes part silk and cotton?

A. Yes; I have seen it that way, too.

Cross-examined by M'r Dean:

Cross 1. How early was your attention called to American suspender webs with the rubber in them?

A. About 1841 to 1845.

Cross 2. Was English web imported at that time?

A. Yes.

Cross 3. I mean webs with rubber in them, so as to make them elastic?

272 A. Yes.

Cross 4. How early and how long did you deal in foreign elastic suspender webbings and in American webbing?

A. It was between 1840 and 1854, both kinds.

Cross 5. How were the American suspender webs that you dealt in woven?

A. I never took that much notice as to tell.

Cross 6. They were not so elastic as these exhibits, No. 3 and No. 8, W. G. H., then, were they?

A. The webs that I used were not so elastic as these, unless when you put the flat-iron on, when they would come out as elastic?

Cross 7. Did you at that time, between 1845 and 1854, see in the market suspender webs like Exhibits No. 3 and No. 8, W. G. H.?

(Objected to by M'r Smith, who objects to the whole line of cross-examination.)

A. I have seen them in the windows for sale.

Re-examined by M'r Smith, de bene esse:

7. About what year did you see these samples, No. 3 and No. 8, in the windows?

A. I could not say positively; after 1850 I know it was; but not before that.

8. Look at Exhibit No. 11, W. G. H., and say whether that is not the kind that you bought, except that the kind you bought was wider between 1840 and 1850?

A. No; I say I never bought this.

9. Will you please to describe as nearly as you can the web that you did buy?

A. The web I bought was thin, thinner than Exhibits 9 and 10; about as light a material as they are, but not made like them.

273 Recross:

Recross 8. Does you last answer refer to American web?

A. It does.

Recross 9. Was that web more elastic than Exhibits No. 9 and No. 10, W. G. H.?

A. About the same till heat was applied to it.

Recross 10. Were there not a great variety of patterns of American web in the market during the period you have mentioned?

(Objected to by M'r Smith.)

A. There were as many patterns then as there are now.

By M'r Smith:

Recross 11. You mention about a great many patterns you don't know from actual knowledge?

A. No, sir.

By M'r Dean:

Recross 12. Do you not know that you saw a great variety of patterns for sale?

A. I did then and I do to-day.

FRANCIS SMITH.

Sworn and subscribed before me this 10th day of August, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

M'r Blake appears for complainant.

CHARLES E. ARMSTRONG, being duly sworn according to law, deposes as follows:

1. What is your name, age, residence, and occupation?

274 A. Charles E. Armstrong. I am aged 38 years. I reside at Philadelphia, and am an importer of leather and shoe goods.

2. What is the name of your firm?

A. Armstrong, Wilkins & Co.

3. Is there a combination in the shoe finding trade in Philadelphia to resist or oppose M'r Smith's patents?

A. Not now, that I know of.

4. Was there ever such a combination, and when?

A. Well, I don't know as there was any combination. In the year 1867 I think my partner sent some money to New York, but don't think that there was any combination among parties here; said money, I think, was sent to M'r Dean, of Stoddart, Lovering & Co., I think was the firm.

5. How was this money raised?

A. I don't know how the money was raised.

6. Was it the firm's money or raised by contributions?

A. It was raised by contributions.

7. Who contributed it?

A. Johns & Lippincott, J. & R. Grist, and our firm, Armstrong, Wilkins & Co.

8. How much was raised?

A. Two hundred dollars, and I think that was in 1867.

9. For what purpose sent to Mr. Dean?

A. That I really don't know whether it was to pay counsel or test the suit. It was about M'r Smith's patents.

10. Was this in 1867 or 1868?

A. I really don't know; I think in 1867; we moved to our present place of business in 1868, and I think it was at our old place of business down Second street.

11. Has no money been raised since to resist M'r Smith's patents?

A. Not that I know of.

12. At the time these contributions were made, were there no others in Philadelphia?

A. None that I know of.

275 (M'r Dean objects to all the testimony of this witness as immaterial and incompetent, and cross-examination waived.)

CHA'S E. ARMSTRONG.

Sworn to and subscribed before me this 10th day of August, 1869.

W. GRIER HIBLER,
U. S. Commissioner.

WILLIAM MURTHA, being duly sworn on behalf of complainant, says:

1. What is your name, age, residence, and occupation?

A. William Murtha; aged over fifty years; reside at No. 36 South Second street, Philadelphia, and am by occupation a notion storekeeper, hosiery and trimmings.

By M'r Blake:

2. Have you dealt in suspenders, and how long?

A. I have dealt in suspenders, I suppose, for the last thirty years, never extensively.

3. When did you first see on sale in the market, suspenders having rubber threads in them to make them elastic?

A. Not less than thirty years ago.

4. Will you look at Exhibit No. 12 and say wherein suspenders you saw thirty years ago differed from that?

A. They were wider and had a frill on each edge—much wider. In other respects they were like that, but I can't say you could see that black gum in them that you see in this. This appears to have nothing but a thread over it.

5. State whether or not those suspenders were plaited or corrugated like that.

A. That I can't say; they appeared to be smoother than that, finer than that.

6. Will you look at Exhibit No. 8 and say when you first saw such goods in the market, as nearly as you can tell?

A. I don't think it is more than twenty years since I saw
276 goods of this character. This appears to be superior to the other,

7. Look at Exhibit No. 13, W. G. H., and say when you first saw such goods on the market.

A. These are later; within the last ten years, I think.

Cross-examined by M'r Dean:

Cross 1. Were there not many patterns of suspenders with rubber in them sold by you thirty years ago?

A. Yes, sir; we sold many kinds. We sold some similar to those, No. 13, and not exactly like 13, but more like No. 8.

Cross 2. Were they made like No. 8, as nearly as you can tell?

A. They were, as near as I can tell, something like this, but had not that elasticity in them. Those like Exhibit 12, with the frill on, were more elastic and more expensive. The others I speak of had not that elasticity about them, therefore we bought the more elastic and expensive ones.

Cross 3. Did those that have the frill on have such large pieces of rubber in them as Exhibit No. 12, W. G. H.?

A. Oh, yes, they had as large a strip. In fact, I would say larger, and covered like and wider apart.

Cross 4. Did the other kind that you have said were more like Exhibit No. 8, have large or small pieces of rubber in them?

A. They had small, if any; the rubber was small, and did not show they had no elasticity in them. I often thought they had no rubber in them. That was the reason we were driven to buy the others.

Cross 5. Did gum-elastic suspenders at that time come of different widths and colors?

A. Yes, sir; they came of different widths and colors.

Cross 6. Of how many different kinds of weaving were they?

277 A. That I cannot tell, as I was not engaged in the manufacture of the article, and the few that came under my notice did not vary greatly.

Cross 7. Was your business a retail business, and about how many suspenders did you sell a year?

A. It was a retail business, and I sold about five dozen a year; it might vary a little, but not many more. I did not sell many.

Cross 8. Of whom did you purchase them?

A. That I cannot tell. They would frequently bring them into the store to me, and I would buy as I wanted them. I might have bought

in New York, that I cannot tell. I know I bought in New York, but from whom I cannot tell.

Redirect by M'r Blake:

8. Will you look at Exhibit No. 14, W. G. H., and say whether in those suspenders you saw thirty years ago, in which the rubber was covered up, it was covered up as it is in this exhibit?

A. Those that I speak of thirty years ago had more elasticity than this, and the ribs were further apart, and the concern was not so heavy, not so solid as this. I think I did see something covered up like this, but not so firm, more slazy than this.

WILLIAM MURTHA.

Sworn to and subscribed before me this 10th day of August, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

WEDNESDAY, 11*th August*, 1869.

Present, M'r Blake for complainant; complainant in person; M'r Dean for defendants.

278 MAURICE RALEIGH, being duly sworn testifies as follows:

1. What is your name, age, residence, and occupation?

A. Maurice Raleigh; my age is about fifty years. I reside in Germantown, Philadelphia, and by occupation I am a manufacturer of notions.

2. Were you ever in the employ of Kirkland, Mansfield & Hall, and when did you leave them?

A. I was in their employ and left them some time between 1845 and 1847. I can't tell exactly when.

3. In what capacity were you in their employ?

A. I sold goods there.

4. What did you do after you left their employ?

A. I don't remember.

5. When was the firm of Mansfield, Hall & Stone formed?

A. I don't know.

6. Were you ever in their employ; if so, how long and in what capacity?

A. I repeat, the firm of Kirkland, Mansfield & Hall, and Mansfield, Hall & Stone were all one firm, and I kept right along. I don't know which was one firm or which the other.

7. In what year did you commence your present business?

A. About three years ago.

8. When did you begin the manufacture of notions or suspenders?

A. I don't know.

9. Did you purchase M'r Doebley's suspender looms; and, if so, when?

A. I don't remember what my former purchases were.

10. Question repeated.

A. I repeat the same answer again.

11. Did you ever own and run suspender looms?

279 A. I did own and do own and do now run suspender looms.

12. When did you first own suspender looms?

A. I don't remember.

13. State what year you now remember as the earliest in which you owned and ran suspender looms.

A. I don't remember.
14. Did you have them last year?
A. Yes.
15. Did you have them five years ago?
A. Yes.
16. Did you have them ten years ago?
A. I owned a loom ten years ago, as far as I can remember.
17. Were you in the same general kind of business that you are now?
A. I don't know how you construed it; our business changed every year.
18. State as nearly as you can when you began to do business on you' own account.
A. While I was with Kirkland, Mansfield & Hall I also always did business for myself. I commenced business, as nearly as I can remember, in 1842.

Cross-examination by M'r Dean waived.

MAURICE RALEIGH.

Sworn to and subscribed before me this 11th day of August, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

Adjourned till the 10th day of September, 1869, at 10 o'clock a. m.

Adjourned till the 17th day of September, 1869, at 10 o'clock a. m.

280 FRIDAY, *September* 17, 1869.

Present, William Smith, complainant; William C. Witter, esq., for respondents.

HERMAN DIENELL, being duly sworn according to law, deposes as follows:

1. What is your name, age, residence, and occupation?
(Counsel for respondents objects to any testimony being taken in the above-entitled suits, on the ground that the time of complainant for taking his testimony has expired, and notice of the same has been served on complainant's counsel, Keller and Blake.
M'r Smith, the complainant, in answer says that Mess'r's Blake and Keller have told complainant that M'r Gifford, counsel for respondent, would give them the time necessary to take evidence, if any further time was required. M'r Gifford, in my own hearing, two days ago, told M'r Blake to ask M'r Keller to fix a certain date when my testimony should be closed, and he would consent to it, further remarking, to suit M'r Keller's convenience; and further, the complainant will take the present testimony subject to the consent of M'r Gifford or the order of the court for further time to take testimony; that the present testimony to be admissible.)
A. Herman Dienell; I am about thirty-three years of age; I reside at 158 Columbia avenue, Philadelphia; I am a machinist and loom builder.
2. In whose employ are you now, and how long have you been in such employ?
A. In W. P. Uhlinger's employ, and have been for seventeen years.
3. Have you during the time you have been in the' employ been in

the habit of constructing looms for the manufacture of suspender webbing?

281 A. I have, sir.

4. In making such kinds of looms with crank-shaft and counter shaft, worked with cams, how many revolutions would the crank-shaft make to the counter shaft's one revolution?

A. Four revolutions.

5. If four quarter cams were put upon the counter shaft would not those four quarter cams all come alternately into play during one revolution of the counter shaft?

(De bene esse objected to as leading. Question withdrawn.)

6. Please to describe how those quarter cams would act during one revolution of the counter shaft.

A. If they were acting on four harness shafts they would lift those shafts one after the other alternately.

7. Would not the warpt threads in the four harness shafts you mention interlock at every pick of the weft when the cams acted in the way described?

A. They would, sir.

8. When the shuttles were propelled by cams could they be propelled by quarter cams? If not, describe by what kind of cams they should be propelled.

A. The common fly shuttle could not be propelled by quarter cams. In this diagram, marked "Exhibit No. 16," *b* is what is called "a tappit," and *a* a quarter.

9. Look at Exhibit No. 2 (defendant's exhibit), R. E. S., ex'r, etc., and say if a round edge could be made on the same heddle shaft as the body of that web.

A. No, sir; it could not.

10. How many heddle shafts are required to make a round edge extra to the other shafts in the webbing?

A. Two, to the best of my knowledge.

11. If you were constructing a loom to make the common elastic
282 suspender, where it took four heddle shafts to make it, how many extra heddle shafts do you rig up to make the round edge?

A. Two extra ones.

Cross-examined de bene esse:

Cross 12. State in what year you went into the employ of W. P. Uhlinger.

A. In 1852, on October the 4th.

Cross 13. What had been your occupation previous to that time?

A. I came fresh from school then.

Cross 14. What kind of looms did you find in process of construction in October, 1852, at W. P. Uhlinger's?

A. Jacquard and shaft looms.

Cross 15. Do you know what kind of looms were in use in the United States previous to that time?

A. I do not. In that year I arrived in this country, and saw no looms previous to that time.

Cross 16. Please state whether, before you came to this country, you were familiar with the various kinds of looms in use abroad.

A. I was not.

Cross 17. Please describe the webbing which was the product of the looms you first saw in this country, giving the relative position of warp, weft, and cords, whether rubber or otherwise.

(Objected to by M'r Smith, as witness is not an expert in weaving, and not competent to answer the question.)

A. The first loom I saw was a Jacquard loom, and manufactured silk trimmings. There was no rubber or other cords used in that kind of a loom.

Cross 18. What other loom did you find constructing at W. P. Uhlinger's in October, 1852?

283 A. No other kind in October, 1852.

Cross 19. When first, if you remember, did you see any kind of loom for making suspender webbing at W. P. Uhlinger's or elsewhere?

A. I would say about 1860.

Cross 20. Were you not familiar with looms for the manufacture of webbing previous to 1860?

Cross 21. State, if you can, the various kinds of suspender webbing manufactured previous to that time, 1860.

(M'r Smith objects to the question, as witness is not an expert in weaving, and incompetent to answer.)

A. I could not do it.

Redirect 22. Have you not from knowledge, information, and belief, seen and known of looms, constructed as before described with crank and counter shafts being used in manufactories in this city since the year 1840, or thereabouts, and have you not constructed such looms while in the employ of W. P. Uhlinger?

A. I have.

23. Cannot, to a limited extent, different kinds of webbing be made in those descriptions of looms, comprising four picks of the weft?

A. By changing the harness.

Recross 24. What kind of webbing can be made in those descriptions of looms which you refer to? Describe it.

A. Heavy or light; coarse or fine.

Cross 25. Describe it with minute reference to warp, weft, and cords, whether rubber or otherwise.

(Objected to, as he is not an expert in weaving and incompetent to answer.)

284 A. I don't understand the question.

H. DIENELL.

Sworn to and subscribed before me this 17th September, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

WILLIAM P. UHLINGER, being duly sworn according to law, deposes as follows:

1. What is your name, age, residence, and occupation?

A. William P. Uhlinger; I am aged forty-six years: residence Sixth and Tioga streets, Philadelphia; by occupation a machinist and manufacturer.

2. How long have been a maker of looms to make suspenders?

A. I have made suspender looms fifteen years ago.

3. What kind of suspender looms have you made, and how were they constructed? Mention all the different kinds.

A. I have made suspender looms with cams and treddles, also Jacquard machines; that is all.

4. In those looms you constructed with cams and treddles, how were those cams and treddles operated on, or what operated them?

A. A revolving shaft driven by the crank shaft at the rate of four to

one, or eight to one; that is to say, that the crank shaft made four revolutions or eight revolutions while the cam shaft made one.

5. Do you mean by the crank and the cam shaft what is called in the trade the counter shaft and crank shaft?

A. I have always called the crank shaft the crank shaft only, and the cam shaft the cam shaft.

6. If there were four quarter cams put upon the cam shaft in
285 the rotation of one revolution of the cam shaft, would not the cams come into operation alternately, one after the other?

(De bene esse objected to as leading. Question withdrawn.)

7. Describe how the quarter cams would act upon the treddles with the crank shaft run four revolutions to one of the cam shaft.

A. It would depress the treddle or treddles once to every revolution of the crank shaft.

8. Would there not be an interlocking of the warp in treddle shaft, for every depression of the treddle by the cam?

(De bene esse objected to as leading.)

A. Certainly.

9. Would there be a pick of the weft for every revolution of the crank shaft?

(Same objection.)

A. There should be.

10. You mentioned the crank shaft sometimes running eight to one of the cam shaft; in that case would the quarter cams remain quarter cams, or what kind of cams would they become?

A. They would become two quarter or half cams.

11. In that case how many revolutions of the crank shaft would run while the quarter cam depressed the treddle down?

A. Twice.

12. Would a quarter cam driven from the cam shaft propel the shuttles backwards and forwards?

286 (Same objection.)

A. It will operate the shuttle back and forward if the cams run four to one; it will run the shuttle one way one time, and the other way the other time.

13. Please draw a diagram of the tappit or cam that is required to propel or drive the shuttle in such a constructed loom.

A. Complainant's Exhibit No. 17 produced.

14. What kind of cams do you call this Exhibit No. 17? What name do you give to them?

A. I call them shuttle cams or shot cams.

15. In making suspender webs with a round edge, could you make the round edge off the same heddle shafts as you made the body of the web?

A. No, sir.

16. Have you been in the habit when making suspender looms, of ordering the reeds to be made to the loom, and are you well acquainted with how many dents to the inch those reeds were made?

A. I have not been in the habit of ordering the reeds; therefore, I am not well acquainted with the number of dents to the inch.

17. Which is the least number of dents to the inch that you ever saw or knew of for a suspender?

A. Eight.

18. Will you please look at Cross 87, and answer, William H. Kirk, and also Cross 91 with answer, and read them, and then look at Ex-

hibit No. 1, R. E. S., defendant's exhibit, and say if it would make any kind of goods in appearance like that?

A. I think it will not. I am not a weaver myself.

19. Please to read over again what has been referred to and see if a fabric made after that manner would not be so loose that you could stick your fingers through it

A. I think it would be as open as gauze.

387 20. If you was to cut a small piece of such a fabric as William H. Kirk describes as referred to in cross 87 and 91 of his deposition, and hold it up and shake it, would not the India-rubber cords fall out, and would not the suspender be worthless?

(De bene esse. Objected on the ground that witness is not an expert at weaving.)

A. It would fall apart.

21. Are you not expert enough in weaving to understand the last answer you have made fully?

A. I am, so far.

Cross examined by M'r Witter de bene esse:

Cross 22. When did you first manufacture suspender looms?

A. Fifteen years ago, if not more.

Cross 23. How do you fix the date?

A. I commenced business in 1850, and it was three or four, perhaps five years before I made any suspender looms.

Cross 24. State, if you know, when Herman Dienell, a witness in this case, came into your employ.

A. A year or two after I commenced business, as an apprentice.

Cross 25. At the time you commenced making suspender looms, what kind of suspender looms, to your knowledge, were in use in the United States?

A. Cam and treddle looms and the Jacquard looms, as well as a few Jacquard looms.

Cross 26. Describe, if you can, the webbing which was the product of what you have called the cam and treddle looms, with particular reference to the relative position of warp, weft, and cords.

388 (Objected to as witness is not sufficient of an expert to answer the question.)

A. I cannot remember.

27. You say in your cross-examination that there were a few Jacquard looms engaged in making suspenders. Do you know of any Jacquard looms making any suspenders except those you saw in Philadelphia?

A. I think I have seen one or two at the Atwater and Bristol Manufacturing Company, in a small village in New York State. Afterwards in New Haven, Conn.

28. Do you know from your own knowledge, information, and belief, that suspender looms with the cam and treddle motion have been in use in this country since about 1840? I mean from your knowledge acquired since you commenced business.

A. I do not know.

W. P. UHLINGER.

Sworn to and subscribed before me this 17th of September, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

THOMAS TOLMAN, being duly sworn according to law, says:

1. What is your name, age, residence, and occupation?

A. Thomas Tolman; age, forty-five years; residence, 1109 Green street, Philadelphia; by occupation a shoe manufacturer.

2. How long have you been engaged in manufacturing Congress boots?

A. About twenty years.

3. Do you recollect complainant coming around with woven elastic gores for Congress boots about eighteen years ago?

289 (De bene. Objected to as leading the witness as to time and article.)

A. I remember his coming around with goods of that kind as long as fifteen years ago, perhaps longer; I can't say how long it has been.

4. Was them the first woven gores you saw in the market, that complainant brought round?

A. I think so, but could not say positively.

5. Can you say what amount of elasticity is required in a gore for Congress boots?

A. I can say what my opinion was; from two to three times its original length.

6. Look at defendants' exhibits of suspender webs No. 2, 6, 5, 1, 8, and No. 3, and say if those kind of goods would be suitable for gores for Congress boots?

A. They could not be used at all for that purpose.

Cross-examination de bene esse:

Cross 7. Is there anything in the relative position of warp, weft, and cords in those exhibits which would prevent them from being used for gores for Congress boots, or in your opinion would it only be necessary that the fabric should be woven under greater tension?

(M'r Smith objects to the question as the witness is neither an expert, a weaver or manufacturer of those goods, and is incompetent to answer the question.)

A. In my opinion they are wholly unsuitable in every respect.

Cross 8. Will you be good enough to state why a piece of goods like Defendants' Exhibit No. 3, if broad enough and woven with the

290 rubber under a high tension, could not be used for shoe goring, not meaning that it would make the best shoe goring?

(Objected to as witness is not competent to answer the question, and for that Defendants' Exhibit No. 3 was woven under the greatest tension possible.)

A. It might be used; but the shoe would be worthless after it was made. It wouldn't be salable, and not durable.

Cross 9. Please look at Defendant's Exhibits No. 4 and Exhibit A, and say if goods woven like those would or would not be suitable for shoe goring.

A. They are both suitable for shoe goring, but not of the best quality.

10. In any of these exhibits of suspender web, viz, Nos. 1, 2, 3, 5, 6, A, you have been looking at, if they were made wide enough, would you put them into your manufactory if they were given to you?

A. I would not.

THOMAS TOLMAN.

Sworn and subscribed before me this 17th day of September, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

THOMAS MILES, being sworn, says:

1. What is your name, age, residence, and occupation?

A. Thomas Miles; aged fifty-one years; residence, 519 North 7th street; by occupation, a shoe manufacturer.

2. How many years have you been manufacturing Congress boots?

291 A. My impression is about twenty years, but I can't say positively in regard to that.

3. Can you say what amount of elasticity is required in the gores of Congress boots?

A. I can't say exactly, but would say about double.

4. Look at defendant's Exhibits No. 1, 2, 3, 5, 6, 8, and state if they are suitable for gores for Congress boots.

A. I don't consider them so at all.

5. If they were suitable in width and color, would you, as a manufacturer, put them in goods of your manufacture?

A. Do you mean in regard to the quality? I think I have used webs as poor as these; I am satisfied I have, as that piece, Exhibit 8. The others I would not.

Cross-examined de bene esse:

Cross 6. Look at Exhibit A, and defendant's Exhibit No. 4, and say if you do not think they are suitable fabrics for making shoe gores?

A. Defendant's Exhibit 4 I do not consider suitable at all; it has no selvedge on; Exhibit A is a fair piece; defendant's Exhibit 4 is probably damaged.

Cross 7. If defendant's Exhibit 4 was a perfect piece and had a selvedge on it, would it not be a suitable fabric for making a shoe gore?

(Mr. Smith objects to the question as being leading and quite outside of the direct examination; and if the thing was different would it be suitable?)

A. Yes, sir; it is rather light, but would answer for some gores.

Redirect 8. Look at defendant's Exhibit No. 4 again, and say whether you would buy goods for your own manufacture of such a cockly appearance as that?

292 A. In the first place I am not making Congress gaiters of any kind; but if I had an order for light gaiters, I would consider that piece of gore, if it was perfect, suitable. I have bought worse.

THOMAS MILES.

Sworn to and subscribed before me this 17th day of September, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

WILLIS HUBBARD, being duly sworn, says:

1. What is your name, age, residence, and occupation?

A. Willis Hubbard; aged fifty-two years; residence, Mantua, Philadelphia, and by occupation I am a commission merchant.

2. Was you ever a commission-merchant in suspenders? If yea, say when you commenced it, and what year you came out of it.

A. I was; I had the suspenders on hand in 1841. I think I quit the business in 1847. We wound up in 1846, and I got out of it in 1847.

3. Were those gum-elastic suspenders you dealt in in those years?

A. We had some gum-elastic suspenders.

4. Whose make or manufacture suspenders did you have in those years?

A. We had some from Hotchkiss & Merriman, I think.

5. Had you any of any other person's make?

A. It runs in my mind that we had some from the Russell Manufacturing Company, Middletown, Connecticut, but can't say positively.

6. Will you please describe the suspender you had from Hotchkiss & Merriman, as near as you can?

293 A. They were a suspender that was elastic, that would draw out and go back again; that is as near as I can describe them.

7. Can you describe how much elasticity there was in them?

A. I cannot.

8. When they were stretched out, was the rubber exposed to view in them?

A. I did not examine them, and cannot say.

9. Can you describe the selvedge, whether it was a round selvedge, a flat selvedge, or a curled selvedge, or anything about them?

A. I cannot.

10. Had you all the different kinds of suspender webbings for sale that Hotchkiss & Merriman made in those years?

A. I think we had.

11. Can you say how many kinds of webbing they made irrespective of the way they had of trimming them?

A. I cannot.

12. Was there only a few different kinds of suspender webbing when you first went into the business?

A. I think there was only a few different kinds.

13. Was not the gum elastic in those suspenders laid in a kind of tube or sheath?

(De bene. Objected to as grossly leading.)

A. They lay in ridges. I don't know what you mean by tubes or sheaths.

14. Was the India rubber covered up lengthwise by cotton thread?

(Same objection as above, and also as witness has said he did not know whether he could see the rubber cords or not.)

A. Yes, sir; it was covered up by the cotton; of course you can't see the gum.

294 15. Look at complainant's Exhibit No. 14, W. G. H., and say if it was covered up similar to that.

A. I cannot say.

Cross-examined:

Cross 16. Can you swear positively that Hotchkiss and Merriman made no webbing of any kind for suspenders in the year referred to which you did not have for sale?

A. I can't swear that they ever made any webbing. We got suspenders from them is all I know about it.

Cross 17. Describe, if you can, the relative position the cross threads and lengthwise threads, and the rubber cords in those goods?

(Objected to, as the witness has already said he can't describe it.)

A. I cannot.

18. To whom did you pay the money for the goods you sold for Hotchkiss & Merriman?

A. I won't be positive, but I think they drawed on us. Our books were all destroyed by fire.

19. After such payment to them or any one else, were you ever asked for repayment?

A. No, sir.

20. Didn't you suppose at the time you were selling Hotchkis & Merriman's goods that they sent you for sale all the kinds of elastic webbing they manufactured?

A. I don't know.

WILLIS HUBBARD.

Sworn to and subscribed before me this 17th day of September, 1869.

W. GRIER HIBLER,
U. S. Commissioner.

295 SATURDAY, 18*th September*, 1869.

Present, M'r Smith, the complainant, and M'r Witter, for respondent.

AUGUSTINE WILLCOX, being duly sworn, says:

1. What is your name, age, residence, and occupation?

A. Augustine Willcox; I am 56 years of age; residence, Philadelphia; I am at present out of business. I was a domestic commission merchant.

2. (M'r Smith requests counsel for defendants to produce an original sample of No. 48 suspenders, which they say they can produce. I request a reply. M'r Witter makes no reply.)

3. Please state at what period you went into the business of selling gum-elastic suspenders, and at what period did you retire from that business?

(De bene esse. Objected to by M'r Witter for the reason that witness has not stated that he was ever in the business of selling gum-elastic suspenders.)

A. I don't know as I can tell when I went into business of selling suspenders. I went into commission business July, 1838, and quit January 1, 1868. I was not engaged in selling goods; I was the bookkeeper; I sold some goods of course when my partner was out, but my business was in the counting-room.

4. Please state at what time you went into business with M'r Wightman, and if you were a copartner of M'r Wightman.

(De bene esse. Objected to a' leading and assumptive.)

A. I went into business with him July 1, 1838, as a copartner.

296 5. State how long you were in business with him, and state whether your partner, M'r Wightman, is living or dead.

A. It is either nine and a half or ten and a half years that we went out of business, either in 1848 or 1849. M'r Wightman is dead.

6. Between the years 1841 and 1848 and 1849 did you deal in and sell gum woven elastic suspenders?

(De bene esse. Objected to as leading.)

A. I can't say; I presume we did. We sold them as soon as they came into market; I can't say when that was. We sold them for a great many years without any gum in; when they had the gum in I can't tell.

7. Did you sell any woven gum suspenders between 1841 and 1849?

A. I think we did.

8. Please state from whom you bought those gum suspenders.

(De bene esse. Objected to, as witness has not stated that he bought any suspenders during those years.)

A. I don't recollect that we bought them from anybody. We were in the commission business at the time.

9. Please state who consigned those woven elastic suspenders to you during that time, 1841 to 1849.

(De bene esse. Objected to, as witness has not stated that he is sure that any suspenders were consigned to his firm during those years.)

A. That question I cannot answer without the dates. I think Hotchkiss & Merriman Manufacturing Company.

297 10. Have you got the books of Wightman & Willcox; and if yea, will you search them and send in the dates to annex to your deposition?

A. I think we have the books. I haven't seen them for fifteen years, that I know of. I will try to find them, and if I can, I will send in the dates when we commenced selling for them.

11. Had you gum-elastic suspenders consigned to you by any other parties besides Hotchkiss & Merriman in those years?

A. I don't recollect.

12. When you search your books, as aforesaid, will you attach to your deposition the names of all persons who consigned gum-elastic suspenders to you during those years.

A. Yes; but I don't think it incumbent on me to search my books for six or seven years to do so.

13. Please look at complainant's Exhibits No. 1, 2, 3, 4, marked N. A. P., and say if you ever in those years, 1841 to 1849, had any gum-elastic suspenders similar to those consigned to you for sale at that time.

A. I should think we did, as we sold a great many different kinds of suspenders; some with gum and some without gum. I supposed they were all made in the same way. There were but two kinds, one with gum and one without gum; but they were of different patterns and styles of trimmings.

14. Can you state how many different kinds of gum suspenders there were exclusive of the way they were trimmed?

(De bene esse. Objected to as an attempt to entrap the witness, who is neither an expert nor a practical weaver, acquainted with the manufacture of such goods.)

A. Two kinds, woven and pasted gum suspenders.

15. Do you recollect any woven gum suspenders between 1841 and 1849 very open and very elastic, so that you could see through them when they were stretched?

298 (De bene esse. Objected to as the leading witness, and as a persistent attempt to entrap him.)

A. I don't recollect whether there were any during those years. I have seen such suspenders so thin you could see through them.

16. Had you any such suspenders consigned to you by Hotchkiss & Merriman during your copartnership with Wightman?

(De bene esse. Objected to, as witness has said that he don't recollect that there were any such suspenders between 1841 and 1849, and also as deceptive.)

A. I don't recollect that we did. I don't know as the books would tell. They were all described by numbers. That don't tell whether they are stretchy or not; you ask me about a matter I don't know anything about, as I didn't handle the goods much, or have very little chance to handle them.

17. Can you state what kind of selvedge those gum-elastic suspenders

had, whether round, or frilled, or contrarywise, which you sold while in partnership with M'r Wightman?

(De bene esse. Objected.)

A. I don't know what it means.

18. Repeated?

A. I should think they were round.

19. Please state if you formerly knew the firm of Krug and Colladay; are they in existence or are they dead?

A. I knew the firm; they are both dead.

(De bene esse. Cross-examined:)

299 Cross 20. Can you swear that no other kinds of gum-elastic suspenders were consigned to you as you think than those like specimens marked complainant's Exhibit 1, 2, 3, 4, marked N. A. P.?

(Objected to, as the witness has stated that he can only think, and is not certain about his statements, and it is therefore impossible for him to swear to the question, and further to give a false appearance to his testimony.)

A. I cannot.

Cross 21. Do you know that all the gum-elastic suspenders which you think were consigned to you by Hotchkiss & Merriman had a round selvedge or any woven selvedge, distinct from the body of the goods?

(Objected to, as witness has stated that he didn't know what is meant by selvedge, and as leading.)

A. I think they all had a round edge.

A. WILCOX.

Sworn to and subscribed before me this 18th day of September, A. D. 1869.

W. GRIER HIBLER,
U. S. Commissioner.

At this point in the examination, William Smith, the complainant, says that he desires to make a statement, as follows:

I put in a specimen of dice gum elastic-suspender-webbing, marked No. 6, for the following reasons: That during the time of the examination of defendant's witnesses before M'r Gifford, in New York City, this specimen of dice webbing was put in as an exhibit and marked No. 6 for the defendants. Complainant asked permission of M'r Gifford
300 to cut a piece of it, as it was a long piece. M'r Gifford gave complainant that permission. Complainant cut a small piece off and marked it No. 6, same as defendant's number, but complainant finds that another specimen has been substituted and marked No. 6 in place of the original Exhibit No. 6. I refer to M'r Blake and Hon. T. A. Jenckes for confirmation of my statement. I also state that in the cross-examination of Julius Hotchkiss, on the 26th day of May, 1869, before R. E. Stillwell, examiner, on the cross-examination of said Hotchkiss, that a whole question and answer between the 33d and 34th cross, which was both read and answered, is omitted both in the printed document and in the original record, and the question was as follows: "How far apart was the India rubber thread put in the reeds when you made goods like Exhibit No. 1?" And the answer was, "In every third dent of the reed, and binder-threads were in the same dent on each side of the rubber thread." Complainant's counsel was so satisfied with the reply that said Hotchkiss made that he cross-examined him no further on the subject, as all was gained what we was seeking to know. Complainant refers to Hon. T. A. Jenckes to be confirmed in his statement.

(Objected to as inadmissible and irrelevant. De bene esse.)

FREDERICK WILLCOX, being duly sworn, says:

1. What is your name, age, residence, and occupation?

A. Frederick Willcox; I am aged 46 years; residence, 1703 Green street, Philadelphia, and, by occupation, merchant.

2. Please state how long you have known of woven gum elastic suspenders.

A. Since 1848.

3. Please state at what time you went into partnership with Billings.

301 A. Commenced January 1, 1849, and ended December 31, 1856.

4. Will you please state, if you can, of whom you bought, or received on consignment, woven gum-elastic suspenders prior to and during the years 1849 and 1850?

A. The firm was Hotchkiss & Merriman, I think.

5. Was there any other firm or corporation, during that time, who either consigned, or of whom you bought?

A. We had suspenders in 1849, I think, from a man by the name of Singleton.

6. Had you any such suspenders as aforesaid from any other party besides Hotchkiss & Merriman and Singleton?

A. I don't think we had.

7. Please look at complainant's Exhibits No. 2, 3, and 4, marked N. A. P., and complainant's Exhibit, marked No. 6, referred to this 18th day September, 1869, in M'r Smith's statement, W. Grier Hibler, examiner, and say if you bought, or had consigned to you, any goods similar to that by Hotchkiss & Merriman.

A. We had, I should think.

8. Please look at complainant's Exhibit S. and T., N. A. P., ex'r. and say if you had any such goods consigned or bought from Hotchkiss and Merriman in those years referred to, 1849, 1850.

A. I don't think we had.

9. Please state, if you can, when you first saw the above "S. and T." in the market; how many years ago?

(Witness inquires if question refers to the make of it, or the general appearance.)

(Complainant answers: General appearance and make, as far as your knowledge extends.)

A. Witness says, as to letter "S," it was about 1856; as to "T," I don't recollect that I ever saw it before.

302 10. Did you ever know a gum-elastic suspender designated by the number 48? If yea, please describe its appearance.

(De bene esse. Objected to, as leading.)

A. I do recollect such a suspender. The hardest job is to give a description of it. A flat surface—it is kind of half-way guessing, it is so long—a flat edge, I think. I don't know what else I could give as a description of it, except it be the color.

11. Please look at complainant's Exhibit No. 12, W. G. H., and see if that exhibit any way resembles No. 48 before mentioned.

A. I don't think it does.

12. Was there many varieties of gum-elastic suspenders exclusive of the manner of trimming them, at the time you went into business with M'r Billings?

A. Not a great many.

Cross-examined by M'r Witter. De bene esse:

Cross 13. Are you thoroughly acquainted with the manufacture of

elastic webbing, so as to distinguish any given piece by the relative position of rubber cords, or other cords and warp and weft threads?

(Objected to, as new matter, and that the witness never testified that he was an expert in such things.)

A. No, I am not.

Cross 14. Is it then by the general external appearance that you have answered questions 7, 8, 10, and 11?

A. It is.

Cross 15. How do you fix the date when you first went into partnership with M'r Billings?

303 A. By counting back eight years from the time when the firm of Willcox, Brothers *and* & Co. went into partnership.

Redirect:

16. If you saw a cart going on the street, could you tell whether it was running on one wheel or two, without having a knowledge of how to build a cart?

A. I think I could.

17. On the same principle when you see a gum-elastic suspender, can you not tell what kind of a selvedge it has without having a knowledge of the manufacture of suspenders?

(De bene esse objected to, as a pregnant and argumentative course of interrogation.)

A. I think I could.

18. Do you not think you have the average knowledge, information, and experience of the generality of dealers in suspenders?

A. Yes, I think I have.

F. WILLCOX.

Sworn to and subscribed before me this 18th day of September, A D. 1879.

W. GRIER HIBLER,
U. S. Commissioner.

Adjourned, subject to new notice.

Deposition of Isaac B. Boyce, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 3, 1869.

I, N. Austin Parks, a notary public duly authorized, admitted, and sworn within and for the county of Suffolk, in the Commonwealth of Massachusetts, in the United States of America, residing and
304 practising in Boston, in said county, do certify that on the third and fourth days of September, A. D. 1869, I caused to appear before me Isaac B. Boyce, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this fourth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 3, 1869.

ISAAC B. BOYCE, having been duly sworn, doth depose and say in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Isaac B. Boyce; age, thirty-four years; residence, Lynn, Massachusetts; occupation, importer of shoe findings, and my place of business being in Boston. I am of the firm of W. S. Boyce & Sons.

2. How long have you been acquainted with the business of importing shoe findings?

A. Since 1853.

3. When was the first time that you saw any woven-elastic goring for boots and shoes offered for sale in the Boston or Lynn markets?

A. I can't give the date precisely, but it was shortly after my coming to Boston, which was in 1855. At that time M'r Smith, the complainant, showed me the first samples of woven-elastic goring that I had ever seen.

305 4. State whether you afterwards had any knowledge of such goring having been in the market at any earlier date than you have mentioned?

A. No.

5. Can you tell from your acquaintance with the business and dealings with manufacturers, what kinds of woven-elastic goring are required by the trade for use in boots and shoes?

A. I think I can.

6. Please state what amount of elasticity is required in the woven-elastic goring for congress boots.

A. The least amount of elasticity required, is that two inches shall stretch to five.

7. Look at Exhibit No. 1, N. A. P., and say if it is fit to be used as shoe goring?

A. It is not.

8. Would you have such an article for sale if it was given to you, and a premium paid you for all you sold?

A. I must say "yes" to that.

9. Do you think, as a tradesman and merchant, that if you sold such goods, buyers would ever come a second time to buy them, or that you could sell any of them at any price for use in congress boots?

A. I don't think they could be sold for that purpose at all.

10. Look at Exhibits 2, 3, and 4, N. A. P., respectively, and say if you would make the same answer with regard to them?

A. I should. They are unfit for shoe gorings.

And in answer to cross-interrogatories propounded to him by Benjamin Dean, esq., of counsel for respondents, he saith:

Cross 1. Have you a license from M'r Smith to use the fabric patented by him?

306 (Objected to.)

A. I have.

Cross 2. Please produce it, that a copy of it may be annexed to this deposition.

A. I will do so.

Cross 3. Does the license contain all the agreements and understandings you have with M'r Smith?

(This line of cross-examination objected to, as the license will speak for itself.)

A. It does not.

Cross 4. What agreements and understandings have you with M'r Smith, not contained in the license?

(Objected to, as cross-examining on private business matters, and as having no bearing upon the result of this suit.)

A. On matters of a private nature.

Cross 5. Have you any agreement or understanding with M'r Smith, not contained in the license, relative to the payment of a royalty for the use or sale of fabrics claimed by him to be within his patent; and, if yea, what is said agreement? State it in full, and declare if you so state it.

A. No; I have none such.

Cross 6. When did you receive said license?

A. On the day of its date. I think some day in September, 1868.

Cross 7. How much royalty have you paid him since that time?

(Objected to as irrelevant.)

A. None.

Cross 8. What amount of elastic fabrics described in M'r Smith's patent have you sold since that time?

307 (Objected to as before.)

A. I have no knowledge.

Cross 9. Have you not sold large amounts?

A. Not in comparison with the general sale of the goods.

Cross 10. Please state the amount as near as you can.

(Objected to as before.)

A. I can't, unless wildly, without consulting my books. It would be entirely guess-work.

Cross 11. State as nearly as you can.

(Objected to as before.)

(Objection that the counsel for respondents has no right to go into a man's private business not relative to the issue.)

A. Well, perhaps fifty thousand yards.

Cross 12. Have you sold some during each month that has elapsed since taking the license?

(Objected to as before.)

A. I have.

Cross 13. Has M'r Smith, at any time since you received the license, demanded of you that you should pay a royalty?

(Objected to as before.)

A. He has not.

Cross 14. Is there not an understanding or agreement between you and M'r Smith that no royalty shall be paid until the patent is sustained?

(Objected to as before.)

308 A. There is.

Cross 15. Is that agreement in writing?

A. It is, I think.

Cross 16. Will it appear in the license itself when produced, or is there any other agreement in writing between you and M'r Smith?

(Objected to as before, and as irrelevant and immaterial.)

A. I do not know whether it is in the license or not. There is another agreement in writing between us.

Cross 17. Is there more than one other agreement?

A. I think not.

Cross 18. Do you not know?

A. If my memory serves me, there is but one.

Cross 19. Will you produce it, that a copy may be annexed to this deposition?

(Objected to as inquiring about private business not relevant to the issue of the suit, and witness is advised not to answer.)

A. It being a private agreement, if my counsel advises me to do so I will do it; but I must ask time to consult my counsel.

Cross 20. Who is your counsel, and is he also counsel for M'r Smith in the matter of this patent?

(Objected to, as whoever may be witness' counsel, he has nothing to do with who complainant's counsel is.)

A. M'r Whiting is my counsel. I think he is also retained by M'r Smith in the matter of his patent.

Cross 21. Have you paid any money, and, if yea, how much, to retain M'r Whiting in the matter of M'r Smith's patents?

309 (Objected to as insolent and irrelevant.)

A. I have paid M'r Whiting, to retain him as our private counsel and advisor in arranging and preparing the agreement alluded to above.

Cross 22. Was he not at that time also counsel for M'r Smith, and did not the amount paid him have reference to the enforcement of M'r Smith's patent?

A. He was not at that time M'r Smith's counsel. I answer no to the other hand of the question.

Cross 23. Have you, either by yourself or in conjunction with others, paid any money for the purpose of sustaining M'r Smith's patent or the prosecution of any of his claims under it?

(Objected to as irrelevant.)

A. In conjunction with others, I have loaned M'r Smith money at different times, in accordance with the agreement alluded to above. He may have made use of the money in that way. He uses his money at his own discretion. That's the only answer I can make.

Cross 24. What other persons have loaned M'r Smith money in conjunction with you?

A. My partners, W'm S. Boyce and Charles Boyce, and the members of the firm of Faxon, Elms & Co.

Cross 25. How much has been loaned to him by yourself and said others?

(Objected to as before.)

A. I don't remember. I don't know the amount, for I have kept no account of it myself. I can't tell.

Cross 26. Was not said loan made wholly with reference to M'r Smith's claims under his patent?

A. It was.

310 Cross 27. What security was given you for its repayment, or from what fund is it to be repaid?

(Objected to as irrelevant to the point at issue, and that the witness is not obliged under the 67th rule to answer such questions.)

A. It is a private agreement, not, I think, bearing upon the main question, and the question will be answered if I decide to produce the agreement.

Cross 28. Is there any agreement or understanding whereby your firm and the firm of Faxon, Elms & Co., or any member of either of said firms, is to have any advantage over other members of the shoe-finding trade in the event of M'r Smith's patent being sustained?

(Line of cross-examination objected to as irrelevant, and as complainant never entered into such understanding with any one.)

A. I do not know of any.

Cross 29. Please now produce said license and said other agreement with M'r Smith.

A. I desire first to have time to consult my counsel.

Adjourned to 2 p. m.

At 2 p. m. resumed.

Having consulted my counsel, I produce the license referred to, and with regard to the agreement spoken of, it being of a private nature, and, as I judge, of no weight in this case, I propose to give an attested copy, omitting the amount of remuneration referred to therein.

We are to be interested in the profits of the patent if sustained, but I am not willing to state the amount of money to be paid for it.

311 Cross 30. Since taking the license from M'r Smith, how much of the web sold by you has been stamped according to the license, and how much has been sold without stamp?

(Objected to as not pertinent to the matter in hand.)

A. I can only tell by consulting my books at the store. The larger part has been stamped.

Cross 31. Have you paid the fees of any of the witnesses in this case?

A. No.

And in answer to direct examination resumed, deponent saith:

11. In any agreement or conversation with the complainant, have you ever had any authority or understanding to have any control in his affairs, or about his patent?

A. No.

12. Has the complainant ever given you any authority, verbal or otherwise, in any of his affairs?

A. No.

13. You spoke in your direct examination of only selling a small portion of the web that has been sold in the market. Do you know of any influence brought to bear upon your trade to cause any reduction in your sales; if so, of what nature was it?

(Objected to.)

A. I do know of such influence; threats of prosecution if I dared to sell, or if my customers dared to buy goods stamped under his patent.

And in answer to cross-interrogatories resumed by B. Dean, esq., deponent saith:

312 Cross 32. Who made the threats, and when and how?

A. F. K. Piper, of the house of Henry L. Daggett & Co., gave B. F. Doak, 2d, of Lynn, to understand that I should be sued if I offered for sale goods so stamped. This was in the winter of 1868, or in the fall of that year. I think in October or November, 1868.

Cross 33. Was what he said in your presence?

A. It was not.

And in answer to direct examination resumed, he saith:

14. Has it been a general complaint with your customers that if they purchased that web stamped with complainant's stamp, they were afraid of being sued for it?

(Objected to.)

A. Such an idea was prevalent at one time.

Adjourned till 4th September, at 10 a. m.

Resumed.

(Deponent here produces the license and the agreement called for and testified of in this deposition to be hereto annexed and made part of the same.)

Cross-examination resumed:

Cross 34. It appears by the agreement that it was agreed that notwithstanding the terms of your license the parties might agree temporarily to sell stamped goods or issue tickets to be used at such prices as might be afterwards agreed upon. Was any agreement or understanding had between you and M'r Smith regarding the prices to be paid by you on the amount imported and sold by you, or are you now indebted for the royalty mentioned in the license upon all goods imported and sold by you since such date?

313 (Objected to, as the agreement must speak for itself.)

A. There was an understanding as to the price to be paid, that until other importers should take out a license we should not pay a royalty except to the amount of the cost of stamping the goods.

Cross 35. Have any other importers taken out a license?

A. Only those whose names are contained in the agreement.

Cross 36. Have you been at all the expense of stamping the web?

A. Yes.

Cross 37. And do not owe any royalty?

A. We do not.

Cross 38. Has M'r Smith or either of the parties to said agreement made any other disposition or sale of any interest in said patent?

A. Not to my knowledge.

Cross 39. Has or not a man named McLellan in New York an interest in said patent?

(Objected to as leading and incompetent.)

A. I do not know.

Cross 40. Have you not learned from M'r Smith that in some way a M'r McLellan, of New York, has an interest in this patent, or is advancing money to aid in its enforcement?

(Objected to.)

A. I have not.

Direct examination resumed:

314 15. Are you not aware that prior to your taking a license other importers had taken licenses?

A. I am not.

16. Did you ever hear complainant mention the names of parties in Philadelphia, importers of elastic webbing who had so taken out licenses?

(Objected to.)

A. I heard him mention names of parties in Philadelphia and New York, whom he said had taken out licenses, but did not know they were importers of these elastic goods.

17. In your cross-examination you have said there was an understanding that no royalty should be paid until other importers had taken out licenses. Has there ever been any understanding between you and complainant that he could have the webbing cease from being stamped free of cost at any time he thought proper?

A. There has not.

ISAAC B. BOYCE.

Articles of agreement made and concluded this twenty-sixth day of September, in the year of our Lord eighteen hundred and sixty-eight,

by and between William Smith, of the city, county, and State of New York, merchant, of the first part, and William Faxon, James C. Elms, and Micah W. Hodgdon, copartners in trade, under the firm-name of Faxon, Elms & Company, all of Boston, in the county of Suffolk and commonwealth of Massachusetts, and William S. Boyce, Isaac B. Boyce, and Charles Boyce, copartners in trade, under the firm-name of William S. Boyce and Sons, all of Lynn, in the county of Essex and commonwealth of Massachusetts, of the second part, witnesseth that—

Whereas the said party of the first part is the patentee and sole
315 owner of certain letters patent, and of the invention therein described, granted to him by the United States, to wit: Letters patent for improvement in corded fabrics and the weaving of the same, the first of which bears date April 5, 1853, and numbered 9053, extended for seven years, March 28, 1867, and reissued June 18, 1867, numbered 2656, and again reissued January 14, 1868, and June 30, 1868, in three separate patents, numbered respectively A, B, and C.; and whereas the said parties of the second part are desirous of obtaining an interest in the profits arising under the said letters patent: Now, therefore,

In consideration of dollars, to be paid by the said parties of the second part to the said party of the first part in the manner following, that is to say, dollars in hand on the signing, sealing, and delivery of these presents, and the remaining dollars out of the net profits realized out of said letters patent, the said parties of the second part paying to the said party of the firs part fifty per cent. of their portion of said profits until the said sum of dollars shall have been paid in full, and upon the further consideration of the agreements and conditions hereinafter contained, the said party of the first part doth hereby sell, assign, and set over unto the said parties of the second part and their legal representatives one-fourth part of all profits which may be realized from said letters patent, to be held and enjoyed by them and their legal representatives under the terms, conditions, and stipulations hereinafter expressed.

It is mutually agreed by the parties hereto that neither the said party of the first part, nor the said parties of the second part, shall sell or dispose of any part or portion of the said patents, or any interest therein, without first giving to the other party hereto thirty days' notice in writing, containing a true statement of the price and terms of payment of such proposed sale or assignment, and the other party shall at any time within said thirty days have the prior right to take and pur-
316 chase the interest so offered for sale upon the same terms as any other party is willing to give, and upon giving notice of their determination so to purchase shall be entitled to receive proper conveyance thereof.

And no sale or assignment of any part of, or portion in, or right under said letters patent shall be made by either of the parties hereto, except upon the condition and under stipulations to be expressed and contained in a bond or proper instrument in writing, which shall provide that the assignee or grantee shall by himself, in good faith, cooperate with the other parties hereto acting under said letters patent to the best advantage and for the mutual interest of all concerned.

The said parties of the second part further agree that they will immediately take out from the said party of the first part licenses under said letters patent, and upon the taking out of said licenses, the said party of the first part shall fully release and discharge the said parties of the second part from all claim for damages by reason of any past violation of the aforesaid letters patent.

It is mutually agreed by the parties hereto that notwithstanding the terms of said licenses, the said parties may, if it be deemed expedient, agree temporarily to sell stamped goods or issue tickets to be used at such prices as may be hereafter agreed upon, the said party of the first part retaining the right to terminate such agreement at any time he may think proper.

The said parties of the second part further agree to and with the said party of the first part that they will publish and make , by circulars or otherwise, to all their customers and to the trade generally, the rights of the said party of the first part under his said letters patent, and use all their influence for the mutual benefit of the parties hereto, by giving information of all goods imported, covered by said let-
317 ters patent, that may come to their knowledge, and of all infringements of said letters patent which they may discover from time to time.

The said parties of the second part further agree that they will, as soon as may be, procure a proper stamping and making up machine, advancing the necessary funds therefor; hire a room to stamp and make up the goods. It being, however, mutually agreed that the cost and expense of the same shall be reimbursed and paid out of the gross profits of the business.

The said party of the first part shall, after the signing, sealing, and delivering of these presents, furnish to the said parties of the second part true copies of the opinions upon said letters patent, given by Judge Mason, of Washington, D. C., and Charles M. Keller, of New York; and the said parties of the second part shall furnish to said party of the first part a true copy of the opinion of William Whiting, of Boston, upon said patents. The fees of said opinions to be charged to and paid out of the gross profits of the business.

It is mutually agreed by and between the parties hereto that all expenses attending the setting up, establishing, and maintaining said letters patent, and of all suits for infringements of the same incurred after the sealing, signing, and delivery of these presents, as well as all other costs and expenses arising under the terms of this agreement, except where otherwise expressed herein, are to be borne in the proportion of three-quarters by the said party of the first part, and one-quarter by the said parties of the second part. But no expenses except for the purposes mentioned in this agreement shall be chargeable to mutual account, except necessary travelling expenses incurred in the interest of the patents. No salary shall be paid to either of the parties hereto.

It is further agreed that if the said parties of the second part shall fail to induce other importers of corded fabrics, covered by said
318 letters patent, to take licenses from the said party of the first part under his said letters patent within nine months from the date hereof, provided the parties hereto shall agree as to the policy to be pursued in accomplishing that result, then the said parties of the second part shall offer to sell and assign some portion, not exceeding one-half of their interest under this agreement, to any person or persons whom they may select, who will pay or cause to be paid to them a proportionate part of the cost of their said interest, together with the expenses incurred under this agreement, and indemnify them against any costs or expenses for which they may have become liable.

It is further agreed by and between the parties hereto that this agreement shall cover and apply to any future extension of the aforesaid letters patent, or any one of them.

And to the true and faithful performance of all the agreements herein contained on the part of the said parties of the first and second part, each of them binds himself, his respective firm, and his and their heirs, executors, administrators, and assigns to the other, and his and their heirs, executors, administrators, and assigns, firmly by these presents.

In testimony whereof we, the undersigned, have hereunto set our hands and seals the day and year first above written.

W'M SMITH.	[L. S.]
W. FAXON.	[L. S.]
JAMES C. ELMS.	[L. S.]
MICAH W. HODGDON.	[L. S.]
W. S. BOYCE.	[L. S.]
ISAAC B. BOYCE.	[L. S.]
CHA'S BOYCE.	[L. S.]

Witnesses—the letter "S" and three words erased before signing—
GEO. M. HOBBS.

Copy of agreement except where blanks are left.

J. C. AVERY.

Importer's license.

This agreement, made this twenty-sixth day of September, A.
319 D. eighteen hundred and sixty-eight, between William Smith, of New York City, of the first part, and W. S. Boyce & Sons, of Boston, of the second part, witnesseth:

That whereas letters patent of the United States were issued to said William Smith, April 5th. 1853, for a new and useful improvement in weaving corded and elastic fabrics, and on the 5th day of April, 1867, were extended for seven years, reissued on the 18th day of June, 1867, and again reissued on the 14th of January and 30th day of June, 1868, in three distinct patents, covering the aforesaid fabrics, etc.:

Now, therefore, in consideration of the performance of the contracts of the party of the second part, the party of the first part hereby agrees to release the party of the second part from all damage for infringing the aforesaid patent rights of the party of the first part, incurred before the signing and sealing of this instrument.

And the party of the second part hereby covenants and agrees with said William Smith, his legal representatives or assigns, to pay to the party of the first part, for every lineal yard or thirty-six inches of elastic webbing to be used for gores of Congress boots or shoes, or any other purpose, for every width of elastic webbing not exceeding five inches, ten cents per yard; not exceeding five and a half inches, twelve and a half cents per yard; not exceeding six inches, fifteen cents per yard; and not hereafter, during the continuance of the aforesaid patents, to manufacture, use, or sell, or cause or procure to be used or sold, any corded or elastic fabrics, the rights of which are claimed by said William Smith under said patents, in any form, until the same shall be stamped by said William Smith, his legal representatives or assigns, with his stamp, and not to be engaged, directly or indirectly, in any infringement or violation of the rights which are claimed by said William Smith under said patent in any form.

And the party of the second part hereby covenants and agrees
320 with said William Smith, his legal representatives or assigns, not to import, or cause to be imported, any corded or elastic fabrics,

such as described in said patents, without first procuring a license from the party of the first part to import such fabrics; and will not hereafter import, or procure to be imported, any corded or elastic fabrics made in part in infringement of the rights which are claimed by said William Smith under said patents in any form, without the license of said William Smith, his legal representatives or assigns, first had and obtained, and not to sell or use such imported goods until the same shall have been first stamped by said William Smith, his legal representatives or assigns.

And the party of the second part further agrees to keep a true record of all corded elastic fabrics purchased or imported by them or by others on their account, and will, each year, and whenever required, render to the said Smith, or to any person duly appointed by him or his legal representatives for that purpose, a true statement from the books of said party of their purchase, sale, and importation of the said corded and elastic fabrics, made wholly or in part according to the claims of the patents of said William Smith, and if such statement, when rendered, is not satisfactory, then the party of the second part covenants and agrees with the party of the first part to submit the books and papers of the party of the second part to be inspected and extracts made therefrom by the said William Smith, his legal representatives or assigns.

And the party of the second part covenants and agrees with the party of the first part that at the signing of these presents that all said goods the party of the second part may have on hand they will cause to be stamped with the stamp of the party of the first part and pay for the same.

It is further agreed that, in case of any violation of the obligations of this instrument by the party of the second part, the party of the first part, or his legal representatives, shall have power to immediately revoke and cancel this license.

321 It is hereby agreed and understood that this agreement shall be so far modified that, in case the aforesaid patent for the elastic fabric as a new article of manufacture shall not be sustained by the courts, no patent fee shall be required by said Smith from the undersigned for violation of such patent as shall not be so sustained.

In testimony whereof the said parties have hereunto set their hands and seals.

(Signed) W'M SMITH. [L. S.]
W. S. BOYCE & SONS. [L. S.]
M. W. HODGDON. [L. S.]

[U. S. 5-cent rev. stamp.]

Deposition of James C. Elms, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 2, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the third and sixth days of September, A. D. 1869, I caused to appear before me James C. Elms, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and

are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

322 SEPTEMBER 3, 1869.

JAMES C. ELMS, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. James C. Elms; age, 41; residence, Boston, Mass.; occupation, shoe finding business.

2 (*a*). How long have you been engaged in importing woven elastic webs, and had knowledge of the wants of manufacturers in that article?

A. We have imported and sold such web since 1861, and I have been acquainted with the wants of manufacturers in the article since 1852.

2 (*b*). How long have you known of woven elastic webs, either domestic or imported, being in the Eastern markets?

A. Since 1859 or '60.

3. Do you know the amount of elasticity required in woven elastic webbing for use in Congress boots?

A. It should stretch from two and a half to three times its length.

4. Examine Exhibits 1, 2, 3, and 4, and say if you think them suitable for gores for Congress boots.

A. They are not. They could not be used.

5. Would you keep them for sale for such purpose, i. e., to be confined to sale for Congress boots, if they were given to you?

A. No; it would be no object to keep them for that purpose alone.

6. In your sales of woven elastic webs with complainant's stamp on them, have you found any combination in the trade not to purchase such goods or any other kind of goods? If you have, state what it was.

(Objected to as immaterial to the issue.)

323 A. I can only say that customers have often declined to buy webbing so stamped, being influenced by other finders, I don't know as to any direct combination having been formed.

7. Have you known any or heard of any indignation meeting having been called or attempted to be called to combine against you and Boyce & Sons for taking licenses and selling complainant's stamped web?

(Objected to.)

A. I have been told by one of our customers in Lynn that they attempted to get up a combination there to oppose the selling of Smith's stamped web, and others of our customers have expected to be sued for using it, as they informed us. The Glendale Company also frightened some of the trade by a circular that they issued.

8. Have you suffered any loss in sale of other goods which you keep through having license from complainant and selling goods stamped with his stamp?

(Objected to as immaterial.)

A. I think we have.

9. Have you had any influence brought to bear upon you through

English houses or manufacturers by parties requesting them not to sell you goods, as if they did such parties would not buy of them?

(Objected to.)

A. English manufacturers have refused to fill orders for us because we were selling M'r Smith's goods under his license.

10. Have not the agents of English manufacturers in this country informed you that they could not take orders from other importers here if they took orders from you?

324 (Objected to.)

A. I can only say that they have declined to take orders from us, and I have understood that that was their objection, but they haven't spoken to me individually about it as to their reasons for declining.

11. Have you at any time dealt in elastic woven web made by the Glendale Elastic Fabric Co.; if so, when?

A. We have. We bought goods in '67 and '68—from '66 to '69.

12. Look at Exhibit X, now shown you, and state of whom you purchased that exhibit, and the time you purchased it, as near as you can.

A. We bought it of the Glendale Elastic Fabric Company of Easthampton, I think, in the spring of 1868.

13. Was it after January, in '68?

A. Yes. We gave them an order to make it as a special thing for us.

14. How long after you gave the order before you received the goods, and to whom did you give the order?

A. Perhaps a fortnight or three weeks. The order was given to M'r Thomas Sawyer, the agent of the company.

15. Have you not heard Thomas Sawyer say before the complainant, and before you and M'r Faxon in plaintiff's absence, that they were making goods under complainant's patent, and dared him to bring suit against them, and wished he would do so; also, that they had been using complainant's patent all along?

A. I don't know that he said he was making goods "under" complainant's patent, but, as complainant claimed, he has said that he would be glad to have complainant sue the company and settle the question; that he wanted it settled.

16. What do you mean in your last answer by the words "as complainant claimed"?

325 A. I mean that M'r Sawyer has never, that I know, acknowledged complainant's patent, but he has said that he was making goods according to his claim.

17. Have you not heard him invite complainant to go to the factory and see the looms working under complainant's claim, and did you not recommend complainant to go to M'r Lovering to get a letter of introduction from him that he might not have his journey for nothing?

(Objected as leading.)

A. I think I've heard M'r Sawyer invite M'r Smith to visit the factory to see the looms. I don't remember asking him to go to M'r Lovering's for a letter, however.

And in answer to cross-interrogatories by B. Dean, esq., deponent saith as follows:

Cross 1. What kind of web was the subject of conversation between M'r Smith, M'r Sawyer, and yourself, when M'r Sawyer invited M'r Smith to go to the mill to see the looms?

A. Woven silk-faced web and woven cotton-web.

Cross 2. Was any distinction drawn between the two at the time?

A. Not that I recollect. They were speaking of them generally.

Cross 3. You mean, do you, that the conversation was about elastic webs generally?

A. Yes; the weaving of them.

Cross 4. What did M'r Sawyer state his object to be in asking M'r Smith to visit the mill and see his looms?

A. He didn't state any object that I know of. He may have been trying to fool M'r Smith for what I know.

Cross 5. Did M'r Sawyer ask him to look at the looms to see whether they were like those M'r Smith claimed to have invented?

A. I don't recollect that he did.

326 Cross 6. Was not the invitation given by M'r Sawyer during the description of the merits of the respective looms?

A. They might have been discussing the looms; I can't say. They were talking of the patent matter and the claims of M'r Smith.

Cross 7. Didn't M'r Sawyer say that M'r Smith could not sustain his patent?

A. I think I have heard him say so.

Cross 8. Did he not tell M'r Smith so?

A. I don't know. I don't recollect any particular time he said so to M'r Smith or any time; he may have done so. I've heard him say that he wanted the thing settled.

Cross 9. Did you have any conversation with any agent of any English house or manufactory, regarding whom you have answered to the direct examination, concerning the validity of M'r Smith's patent, and the time when elastic webs were made in England?

(Objected to because the patent must speak for itself, and any information from England respecting its validity must come through printed publication or a patent issued, and as probably the party thus objecting never read complainant's patent or his claims.)

A. I've had conversations with their travellers—not with any manufacturers direct—who have said that these webs were made in England previous to M'r Smith's patent.

Cross 10. Were those conversations at times when they declined to take orders, as you have answered in direct examination, and with reference thereto?

(Objected to as before.)

327 A. At one time an agent declined to take orders from us by instructions from the other side, and I think he was one who stated that the woven elastic goods were made previous to Smith's patent. At other times this was said by parties who did not so decline The agent I speak of first, I think, told me that the goods were made before Smith's patent at the time he declined to take an order.

Cross 11. Did not they object to selling goods to you on the ground that they were unwilling to have the goods stamped as having been made under M'r Smith's patent?

(Objected to as before, and as leading.)

A. Not that I recollect; I don't think they stated any particular grounds, but merely declined taking orders.

Cross 12. In your answer to 9th direct interrogatory, you say "English manufacturers have refused to fill orders for us, because we were selling M'r Smith's goods under his license;" did they not refuse because you were selling their goods under his license?

(Objected to as before.)

A. Not in particular, that I know of; merely that we had taken

license from M'r Smith, and were selling goods under his license; they knowing that fact.

Cross 13. By whom were the goods manufactured that you were selling under M'r Smith's license?

(Objected to as before.)

A. Luke Turner, of Leicester, England; Hodges & Son, of the same place; and Turner, Barrs & Co., of Manchester, England. We had some of the Glendale Elastic Fabric Manufacturing Co.'s goods, of Easthampton, Massachusetts, and of Simon May & Co., of Nottingham, England.

Cross 14. Did you stamp those goods as M'r Smith's patent?

328 A. We did.

Cross 15. Did M'r Smith manufacture any goods himself at that time?

A. Not that I know of.

Cross 16. Did you buy any goods of him?

A. No.

Cross 17. Was the market supplied entirely from abroad, and by the Glendale Elastic Fabric Co.?

A. It was.

Cross 18. Have you a license from M'r Smith?

A. We have.

Cross 19. Is it like the one to W. S. Boyce & Sons, testified to by Isaac B. Boyce?

A. It is.

Cross 20. Did you make any other agreement with M'r Smith, with reference to his patent, or the use and sale of the fabric claimed to be patented by him; and, if yea, will you produce it, that a copy may be annexed to this deposition?

Adjourned to nine and one half a. m., September 4, 1869.

Resumed 6th September.

A. Yes. It is just like the one produced by M'r Isaac B. Boyce.

Cross 21. What compensation did you give M'r Smith for entering into said agreement?

A. I should decline to answer that, it being of a private nature, without the advice of my counsel.

Cross 22. What do you mean by the word "claim" in your answer to 16th direct interrogatory? Do you mean that it was what M'r Smith said?

A. I mean that in his patent M'r Smith claims a certain process of weaving this web, and M'r Smith claims that they make silk-faced web according to his patent.

329 Cross 23. What kind of loom did M'r Smith describe in his conversation with M'r Sawyer?

A. I cannot recollect. I don't know that he described any at all.

Cross 24. Did he say anything about two shuttles and a standing warp?

(This whole course of cross examination objected to as immaterial.)

A. I don't recollect anything of it. They could talk understandingly together about a loom, when I shouldn't know what they were talking about, as I am no mechanic.

Cross 25. What did M'r Smith say in reply to M'r Sawyer's invitation that he should visit his factory and see the looms?

A. I don't know as I can recollect just his answer. If I recollect aright, it is something like this: "You don't mean what you say." I can't tell exactly, it was so long ago.

Cross 26. What did M'r Sawyer say to that?

(This line of cross-examination objected to as being merely to prolong the time.)

A. I couldn't swear to what he said. I might have been out of the way at that time. I was attending to my business, and don't recollect.

Cross 27. Are you sure M'r Smith made any reply to M'r Sawyer's invitation?

A. If I recollect aright, he said, "You don't mean it," or something to that effect, and I never believed he did.

Cross 28. Why not?

A. It was imagination of my own; I don't know as I could give any particular reason.

330 Cross 29. Can you give no reason whatever for entertaining such belief?

A. No; or I might say, in answer to that, that I didn't think M'r Thomas Sawyer had any right to invite him there to the factory; I mean, without consent of the directors.

Cross 30. Your last answer relates to the question of M'r Sawyer's authority. I wish you to answer as to your grounds for not believing his intentions to have been such as he himself expressed.

(This line of cross-examination objected to as incompetent, irrelevant, and ridiculous.

While the above objection was being written down, M'r Dean was conversing with M'r Nathan Nichols, upon which the complainant desires the following objection to be entered on the record:

Complainant objects to the counsel for defendants conversing with his witnesses before they are put upon the stand.

M'r Dean suggests that M'r Nathan Nichols is his client in this cause, and that he was conversing with him as such.)

A. Well, because I am satisfied that he could have had no right to invite him, not being a director, but only a travelling agent of the company; and having myself been agent of the previous company—the Goodyear Elastic Fabric Company—I knew the machinery was very carefully guarded from inspection.

Cross 31. Is that all the reason you had, or have, for not believing he expressed his true intentions?

A. I don't think, and didn't think, they wanted to show up their looms.

331 Cross 32. Why not?

A. I didn't think they wanted M'r Smith to look at them. It was my own imagination, as I said before.

Cross 33. Why did you think they didn't wish M'r Smith to look at them?

(Objected to as before.)

A. Merely because I thought so. It was my imagination.

Cross 34. Why did you think so?

A. I've explained it as far as I can.

Cross 35. Did you think they were desirous of keeping from M'r Smith a knowledge of their looms, and methods of weaving?

A. I may have thought so, and may not; I can't recollect exactly what I thought; I've explained as fully as I can.

Cross 36. Did you think M'r Sawyer was unwilling that M'r Smith should see the looms and methods of weaving?

A. I don't know as I thought anything about it, with relation to him.

Cross 37. Did the existence of M'r Smith's patent, and a belief that there was an unwillingness to give him information that might be used

adversely to them, cause you to think that M'r Sawyer did not mean that M'r Smith should see the loom?

A. I don't know as anything of that kind entered my head while he was talking. I've explained the matter as fully as I can.

Cross 38. Prior to the agreement and license you have testified about, were you a member of a committee of the shoe-finders to act adversely to M'r Smith's patent?

A. Something like a year or more before, in 1867, I think, I was appointed upon a committee to get an opinion upon M'r Smith's patent.

332 And in answer to direct interrogatory resumed, deponent saith:

18. (De bene esse.) From your further recollection, since your last examination on Friday last, can you recall the words of Thomas Sawyer to your recollection, of his saying that they were making the Union web according to process of complainant's patent, and that he dared complainant to bring a suit; telling complainant that he dared not bring suit against the company, and that he wished he would do so?

A. I recollect that he dared M'r Smith to sue the company; but have no further recollection as to the other matters.

J. C. ELMS.

Deposition of Ezra Baker, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston in said county, do certify that on the fourth day of September, A. D. 1869, I caused to appear before me Ezra Baker, a witness on behalf of complainant, in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary public, have hereunto
333 subscribed my name and affixed my notarial seal of office this fourth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

EZRA BAKER, recalled, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, to wit:

1. Have you been previously examined as a witness in any of these cases?

A. I have.

2. At the time W'm B. Kibby, of Washington, handed to you the gores with elastic springs, as you testified in your former examination, were the gores in the piece, or were they inserted in tops for boots?

A. They were inserted in the tops of boots.

3. What use did you make of those tops for boots?

A. I had bottoms put on to them for his wife's wear.

4. Were you at that time a manufacturer of Congress boots?

A. I was not.

5. Have you been such at any time since?

A. I have.

6. What amount of elasticity do you consider requisite for a wove elastic gore for Congress boots?

A. I don't feel competent to answer that question, as I have not been in the business for several years.

7. Examine Exhibits 1, 2, 3, and 4, and say if, in your opinion, they are fit for use as a gore in Congress boots?

A. I should answer, from my former experience in manufacturing, that they were not fit for gores.

334 And in answer to cross-interrogateries by Benj. Dean, esq., deponent saith:

Cross 1. Is it for the reason that they are made for another purpose, and not sufficiently elastic?

A. That did not enter into my mind at the time I gave the answer. I did not know what they were made for; but I knew they were not fit for gores. I did not consider them fit, because not sufficiently elastic.

Direct examination resumed:

8. Examine the construction of the webs in those exhibits and say if they were sufficiently elastic; would they be fit for gores for elastic boots, or would any one purchase them for that purpose?

(Objected to as immaterial.)

A. I don't feel authorized to answer that question in full, as I don't know what a man's taste may be. At one time I made some boots of large plaids, which sold at a good profit, and such colored gores might fit them.

9. Please examine those exhibits again and say, without reference to color, whether, in your judgment, gores made after the construction of those exhibits would be salable in the market, even if they were sufficiently elastic?

A. I am not competent to judge, as I am not in the business, and cannot say what the tastes of people are.

10. If you were going to purchase a pair of Congress boots for yourself, would you, as a matter of choice, purchase boots with such goring, or choose such as are regularly sold in the market?

A. I should choose those now sold in the market.

EZRA BAKER.

Adjourned to Monday, 6th Sept., at 10 a. m.

335 *Deposition of Benjamin F. Doak, taken, subscribed, and sworn to before N. Austin Parks, examiner, September* 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the fourth day of September, A. D. 1869, I caused to appear before me B. F. Doak, 2d, a witness on behalf of complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this fourth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

B. F. DOAK, 2d, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. B. F. Doak, 2d; age, forty-three years; residence, Lynn, Mass.; occupation, shoe manufacturer.

2. Look at Exhibits 1, 2, 3, 4, and say if they are suitable for gores for Congress boots?

A. They are not.

336 3. What amount of elasticity is required for woven elastic shoe-gores in your business?

A. From two to three times the length.

(Counsel for respondent declines to cross-examine.)

BENJAMIN F. DOAK, 2D.

Deposition of Joseph Davis, 2d, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonweath of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the fourth day of September, A. D. 1869, I caused to appear before me Joseph Davis, 2d, a witness on behalf of complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this fourth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

JOSEPH DAVIS, 2d, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz.:

337 1. State your name, age, residence, and occupation.

A. Joseph Davis, 2d; age, thirty-six years; residence, Lynn, Mass.; occupation, shoe manufacturer. I have been such for fourteen years.

2. Do you know a firm in Columbus, Ohio, of Reed, Jones & Co.?

A. Yes.

3. In the fall of 1868 did you contract with them to make a line of Congress boots for them?

A. I did, in December, 1868.

4. What was the amount of the contract and number of boots?

A. I can't tell without looking at my books.

5. What price per pair did you charge them for the different grades of Congress boots?

A. I don't remember.

6. Can you state what was the amount of the bills under that contract?

A. I cannot.

7. What amount of woven elastic goring for Congress boots have you used since June, 1868?

A. I can't tell; I don't know.

8. Will not your books show the amount of such goods bought from different parties during that time?

A. Yes, sir.

9. Will you prepare a certified account and attach it to your deposition here?

A. Not at present.

10. Do you refuse to render such account?

A. I do to-day. I may change my mind.

11. Do you refuse to do it at any other time?

A. I am not prepared to answer.

12. Question repeated.

A. I answer in the same manner.

13. Have you bought 20,000 yards of such goring since June, 1868?

338 A. I can't tell. I don't know.

14. Have you purchased any since the fall of 1868?

A. I can't tell of whom, but I have bought some.

14. Of whom did you purchase those goods?

A. I can't remember that, sir.

15. Did you purchase any of Henry L. Daggett?

A. I don't remember, within that time.

16. Any of Faxon, Elms & Co.?

A. I don't remember.

17. Any of W. S. Boyce & Sons; Sears; Skelton & Co.; Pelton & Snell; Nathan Nichols?

A. I have.

18. Of which of them?

A. I remember buying some of Skelton, that's all I can swear to; all I remember distinctly.

20. With your contract with Reed, Jones & Co., did you not give them a guaranty to secure them against any liability for infringing complainant's patent?

A. No, sir.

21. Did you not say to them that you was secured from any liability and would secure them?

A. No, sir.

22. Did any one call upon you, or did you go yourself to others, to try to get up an indignation meeting against those that had taken licenses from complainant?

A. No, sir.

23. Was it not a common report about Lynn that such a meeting was attempted to be organized?

(This whole line of inquiry objected to as entirely incompetent.)

A. I never heard of it.

24. Did you not buy webbing stamped with my stamps for your samples against the fall trade?

A. No, sir; not an inch.

339 25. Is the last answer you have given as true as any one you have given before in your testimony?

A. It is.

26. Look at Exhibits "1," "2," "3," "4," and say if they are suitable for goods for Congress boots.

A. I think not.

27. Can't you speak more definitely than to say, "I think not"?

A. No.

28. How much elasticity is required for woven elastic gores for Congress boots?

A. I should think it ought to stretch twice its length.

Cross-examination by Benj. Dean, esq.:

Cross 1. Is it because Exhibits 1, 2, 3, and 4 will not so stretch that they are not suitable for shoe-gores?

A. Yes, sir.

Direct examination resumed:

29. Examine those exhibits again, and look at the style of construction of them, and say, if they possessed the requisite amount of elasticity, if you would use them for shoe-gores?

A. If my customers required it, or their taste required it, I would. If they were made elastic enough, it would be entirely a matter of taste.

30. Did the taste of your customers ever require such goods, or do you think, in your honest opinion, that their taste would ever require such goods?

A. Their taste never did require them; but there is no accounting for taste, and there have been quite as wonderful changes as that.

340 31. Please mention any of those wonderful changes that have taken place in gores for Congress boots.

A. I can't recall any now.

Cross-examination resumed:

Cross 2. Are not many slippers made of material like carpetings; and if such material should be used for a higher top shoe, or for Congress boots, would not these gores, like Exhibits 1, 2, 3, and 4, if woven with the requisite elasticity, be appropriate?

A. Yes, sir.

Direct examination resumed:

32. Would you use such materials as the exhibits before mentioned, without a change in your customers' ideas of such goods?

A. If my customers required such goods I should use them, not otherwise.

JOSEPH DAVIS, 2d.

Deposition of Joseph Dix, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising

in Boston, in said county, do certify that on the fourth and sixth days of September, A. D. 1869, I caused to appear before me Joseph Dix, a witness on behalf of complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several
341 answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this sixth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

JOSEPH DIX, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by M'r Smith, the complainant, as follows, viz:

1. Have you been previously examined as a witness in one of these cases?

A. I have.

2. In your former testimony, when speaking of the negotiation with me for the purchase of my patent, you omitted to give the date of that negotiation; will you now give that date?

A. I cannot, without referring to my books or letters, which I will do and add it to this answer; as near as I can find, it was during the month of February, 1862.

3. Do you recollect meetings called of the importers and dealers in shoe findings, at the store of William H. Boyce & Sons, in 1867?

A. I do.

4. Do you recollect the complainant reading his patent through before the meeting, and claiming the fabric of woven elastic webbing?

A. I recollect your having the patents there, and I think we read them, but I don't recollect whether you read them or not; I think very likely, but I can't say; I think he did claim the fabric.

342 5. Was there not a committee appointed to investigate and get legal advice upon the validity of complainant's patent on the fabric?

A. The committee was appointed to investigate the validity of the patent; not confining them to any particular part, but taking the patent as a whole; to see if M'r Smith's claims were valid.

6. What counsel did you visit, as a member of that committee, at that time?

A. We called on M'r Curtis, and not finding him at his office, called on M'r Giles.

7. Was it not to inquire of the validity of complainant's claim for imported woven elastic goods, and whether you were liable, and complainant's patent valid to hold you liable to him, as dealers in such imported fabrics?

A. That must have been part of the motive, but the simple idea I had in my mind was, to see if M'r Smith's patent was valid and could be maintained.

8. Didn't complainant say and claim that his patent was valid for the

imported woven elastic webbing? And were not those meetings held in consequence of such claim?

A. I believe you did claim as you say, and that the meetings were called to talk the matter over and investigate the subject.

9. Do you recollect complainant sending you a letter in the early part of 1862, to cause to be delivered to Lovering and Daggett, cautioning them not to take the assignment of his patent from the Silk Manufacturing Co. to the Elastic Fabric Co.?

A. I can't tell without reference to my letters. I find a letter referring to a notice to be delivered to M'r Lovering. My impression is I didn't deliver it.

10. Was not the negotiation with you and others, before spoken of, before the assignment of complainant's patent by the Silk Manufacturing Company to the Elastic Fabrics Company?

343 A. My impression is that M'r Smith stated to us that it was in the hands of some party connected with the Silk Manufacturing Company.

11. Look at Exhibits 1, 2, 3, and 4, and say if they are fit for use as elastic gores for Congress boots.

A. I should say not.

12. What amount of elasticity can you say, from your knowledge of the trade and of such goods, is required for woven elastic fabrics for Congress boots?

A. I should say a first-class boot would require a stretch of three times its length. I have seen some used in poor class work with very little elasticity.

13. Would those goods in poor class work you speak of give satisfaction to the manufacturers or the customers?

A. I can't say.

14. Would goods for poor class work with little elasticity be of utility and answer the purpose they were intended for?

A. I should say not.

Counsel for respondents declines to cross-examine.

JOSEPH DIX.

Deposition of George W. Keene, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the fourth day of September, A. D. 1869, I caused to appear before me George W. Keene, a witness on behalf of complainant in the above-entitled case, and that

344 he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this fourth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

GEORGE W. KEENE, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Geo. W. Keene; age, fifty-four; residence, Lynn, Mass.; occupation, shoe manufacturer for the last thirty-three years.

2. Look at Exhibits 1, 2, 3, 4, and say if they are suitable for gores for Congress boots.

A. They are not suitable for anything we make now or have made, to my knowledge.

3. What amount of elasticity is required for woven elastic shoe goring in your business?

A. The more the better. It ought to stretch from two to three times its length.

Counsel for respondents declines to cross examine.

GEO. W. KEENE.

345 *Deposition of Charles Winslow, taken, subscribed, and sworn to before N. Austin Parks, examiner, September* 4, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the fourth day of September, A. D. 1869, I caused to appear before me Charles Winslow, a witness on behalf of complainant in the above entitled case; and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this fourth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 4, 1869.

CHARLES WINSLOW recalled, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. Have you been previously examined as a witness in these cases or any of them?

(Objected to as immaterial.)

A. I have.

2. In your former testimony you spoke of requesting E. H. Saw-
346 yer in 1854 to purchase complainant's patent; did you at that time recommend him to make alterations in his looms to enable him to make the complainant's kind of goods?

(Objected to as before.)

A. I advised him to purchase a license of M'r Smith, and to make goring like his.

(Objected to as before.)

3. Examine Exhibits 1, 2, 3, 4, and say if they are fit for use for Congress boots or shoes.

(Objected to as before.)

A. No, sir; it is an impossibility to use them for that purpose. The boot couldn't be got on if such a gore were to be used.

4. As a manufacturer of Congress boots, what amount of elasticity should you say was required for woven elastic gores to be used in Congress boots?

(Objected to as before.)

A. We now have one inch to stretch from three to four inches. That is our rule.

5. From your knowledge of the trade and of the wants of manufacturers, do you believe that the manufacturers would put into their work such gorings as Exhibits 1, 2, 3, and 4, even if the gorings were given to them?

(Objected to as before.)

347 A. No, sir; it would be impossible for them to use. They couldn't sell or give away the goods if they were to do so.

Counsel for defendants declines to cross-examine.

CHARLES WINSLOW.

Deposition of Lorenzo S. Cragin, taken, subscribed, and sworn to before N. Austin Parks, examiner, Sept'r 6, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certfy that on the sixth day of September, A. D. 1869, I caused to appear before me Lorenzo S. Cragin, a witness on behalf of complainant in the above-entitled case, and that, he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propound ed to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 6, 1869.

Lorenzo S. Cragin, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by the complainant, as follows, viz:

1. State your name, age, residence and occupation.

348 A. Lorenzo S. Cragin; age, sixty-nine years; residence, Boston, Massachusetts; occupation, dealer in shoe manufacturers' goods, of the firm of Cragin, Page & Co.

2. I find your firm name, with others, as parties of the second part in an agreement with N. Nichols, H. L. Daggett, and Warren L. Tower as parties of the first part, to combine and subscribe money to oppose complainant's patents; state who called on you to subscribe to that agreement, what was said, and what inducement was offered you.

(Objected to as immaterial and incompetent.)

A. I can't say who called upon me. No inducement was held out. We signed it in self-defence. I can't remember what was said, and can't say whether I personally signed the agreement or whether my partner did.

3. What amount of money have you subscribed and paid to this organization?

A. Nothing.

4. What amount of woven elastic webbing have you sold since June, 1868?

(Objected to.)

A. Our sales of goring are comparatively very small, but I can't give the amount without examination of my books.

5. Will you procure a statement from your books and annex it to this deposition?

(Objected to.)

A. Not unless I am obliged to.

6. Are you not aware that you can be compelled to do so?

A. I don't know anything about it.

349 7. Look at Exhibits 1, 2, 3, and 4, and say if you consider them suitable for gores for Congress boots?

A. I don't know anything about it. I never had such goods for sale.

8. What amount of elasticity is required in woven webbing to fit it for use as goring for Congress boots?

A. I don't know as there is any amount.

9. Does not woven elastic goring for Congress boots require some elasticity in them?

A. I should think it did.

10. Please state how much.

A. I can't say. I don't know. I am not a manufacturer of boots or shoes and therefore don't know. Not mechanic enough to tell.

11. If you were purchasing or importing such kinds of goods, what judgment should you make use of to determine the amount of elasticity required for the trade?

(Objected to, as the witness is not an expert.)

A. In ordering webs we never make any mention of elasticity, whether more or less. We take it for granted that the manufacturer is the best judge.

12. Have you ever had any such goods returned on your hands for want of sufficient elasticity?

A. Not to my knowledge.

13. Would you purchase goods for the use of the trade without more elasticity than two to one?

A. I can't say. I don't know how much it stretches to the inch.

14. Do you know anything about such goods; have you any judgment concerning them? If so, state it.

A. Yes, sir. I know that it is called elastic webbing, and is used for boot and shoe purposses; that it is sometimes strong and sometimes weak and subject to decay.

350 15. Take Exhibits 1, 2, 3, and 4 in your hand again, if you please, and say if that amount of elasticity would be answerable for shoe gores?

A. I should say not.

Counsel for defendants declines to cross-examine.

LORENZO S. CRAGIN.

Deposition of William A. Brown, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 6, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the sixth day of September, A. D. 1869, I caused to appear before me William A. Brown, a witness on behalf of complainant in the above-entitled case, and that, he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 6, 1869.

William A. Brown, being duly affirmed, doth depose and say, in answer to interrogatories propounded to him by M'r Smith, complainant' as follows, viz:

351 1. State your name, age, residence, and occupation.

A. William A. Brown; age, thirty-six years; residence, Lynn, Mass.; occupation, shoe manufacturer; have been such since 1856.

2. Look at Exhibits 1, 2, 3, and 4 and state whether, in your judgment, such goods could be of any use as goring for Congress boots.

A. No.

3. What amount of elasticity, in your judgment, is requisite for woven elastic goring for Congress boots?

A. I always stipulate that it shall stretch three times, that is, three to one.

4. From your knowledge of the trade and your experience as a manufacturer, do you think goods would be salable with goring like those exhibits inserted in them?

A. No.

And in answer to cross-interrogatories propounded by Benjamin Dean, esq., deponent saith as follows, viz:

Cross 1. Is the reason why they are unsuitable because other material than rubber preponderates, and they are not sufficiently elastic?

A. Yes.

And in answer to direct examination resumed deponent saith:

5. If those goods were sufficiently elastic, but made after the construction of those exhibits, when they were to be cut bias as for gores to Congress boots, would they not be of too loose texture to hold the stitching when inserted in a boot?

A. If things were different to what they are it would be very difficult to tell what they would be. To that question I should answer, no.

352 6. Examine Exhibit No. 2 again, and see when such a constructed web was cut bias for a Congress boot, if it would not, when sewed in, inclose two or three strands of the rubber.

A. I should say "no" emphatically; no more than any other goods.

And in answer to cross-interrogatories resumed deponent saith:

Cross. 2. Have any and what changes taken place in the shape of elastic gores for boots?

A. From being a perfect V-shape they are now cut nearly of the same width at both ends—very nearly so.

W'M A. BROWN.

Deposition of Nathan Nichols, taken, subscribed, and sworn to before N. Austin Parks, Examiner, September 6, 1869.

I, N. Austin Parks, a notary public duly authorized, admitted, and sworn, within and for the county of Suffolk, in the Commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that, on the sixth day of September, A. D. 1869, I caused to appear before me Nathan Nichols, a witness on behalf of complainant in the above-entitled case; and that he, having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him, were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

353 In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 6, 1869.

NATHAN NICHOLS, being duly affirmed, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. Have you been previously examined as a witness in either of these cases?

A. I have.

2. Do you recollect the year and the time of year when negotiations were carried on for the purchase of complainant's patent?

A. I do not.

3. Have you no papers or letters by reference to which you can fix this date?

A. I cannot say; possibly I may have.

4. Will the letter of M'r Dix, which you read to day, fix the date in your memory?

A. It will not.

5. Did you not call at complainant's office, 69 Gold street, New York, in the beginning of March, 1862, as stated in said letter?

A. I cannot tell.

6. Was not this negotiation prior to the assignment of complainant's patent to the Elastic Fabric Company, and was not the complainant

urgent for you to close the matter on account of his fear of said company's getting out a patent?

A. I don't recollect and cannot tell.

7. Please state all that you do recollect about it as to dates.

(Objected to as immaterial.)

354 A. I do not recollect; but, from the letter shown me to-day by M'r Dix (which I presume was written at the time of its date), I presume the negotiations were pending at the time of the writing of that letter.

8. In complainant's different conversations with you before the extension of his patent, and in conversations and meetings of complainant with you and others in 1867, did not complainant always claim that he had a right to the fabric spoken of in his patent?

(Objected to.)

A. As I recollect, M'r Smith claimed that certain elastic goods could not be made except by machinery of his invention, which machinery was understood to work with two shuttles.

9. Did not complainant, in 1867, claim the fabric made in whatever loom it could be, or in no loom at all; and did you not apply to counsel for advice as to whether his claim was good or not?

A. He did not, and I did not so apply to counsel. At the time M'r Smith notified a meeting of the finding houses at the office of W. S. Boyce & Sons, I was present. I asked M'r Smith if his patent claimed to cover all the elastic goods I sold. He stated distinctly that it did not. I asked him further if he could tell on examination what goods were covered by his patent; he said that he could. I further asked him if I could tell; he said that I could if I was anything of a mechanic. On the Thursday following I left the State and had nothing further to do with the matter till 1868, when M'r Smith again returned.

10. Was anything further said between complainant and yourself at that interview?

A. We had further conversation, but I do not now recollect the purport of it.

11. Did complainant leave immediately after that conversation?

355 A. I think he had got up to go, and left immediately after.

12. Was any kind of goods exhibited to complainant in that conversation?

A. I think not.

13. Had you been notified by circulars of complainant and verbally not to infringe his patent?

A. I recollect no verbal notice. My firm received circulars from M'r Smith in relation to the goods claimed by his patent.

14. At that meeting spoken of at W. S. Boyce & Sons, were the parties present not all warned not to infringe said patent; and was not that meeting called to consider what should be done about it?

A. As I recollect, the meeting was called that M'r Smith might state his case so that the finding-houses should understand his position. I don't recollect any warning being given.

15. Were you not well aware at the time of that meeting that M'r Smith had such patent and made such claim?

A. I had nothing but his word for it. I never saw the patent.

16. Do you mean to say that you didn't know he had a patent when you gave him an affidavit at the time of its reissue?

A. The original patent that M'r Smith received from the Patent Office I knew about. That's the only one I ever had in my possession, I think

17. Please explain how you deny in your answer to complainant's bill of complaint having received any notice, as stated in said bill; I quote the passage: "and this defendant denies having received any such notice as stated in said bill of complaint."

A. The answer to the bill was drawn by my counsel, and signed in accordance with their advice.

18. Seventeenth interrogatory repeated.

A. I have no other answer to make.

356 19. Do you put any private mark upon the ends of your woven elastic web before selling them?

A. I do not.

20. Did you ever do so?

A. I don't recollect that we ever did.

21. Do you not know that it is a general custom among importers to do so?

A. I do not.

22. What is the meaning of the letter "D" inserted in your invoices of such goods and upon the tickets around said goods?

A. It is merely a designation of the style and quality. I don't know that it is strictly confined to my house, but presume it is.

23. State what style and quality it represents.

A. It represents a Union web of medium quality.

24. Look at this invoice issued by your house, dated July 14, 1868, and state if it refers to Union webs of medium quality.

A. I believe it does.

25. Have you sold, and are you now selling, goods similar to Exhibit Y?

A. I think we are, so far as I can judge.

26. Are you selling Union goods similar to that exhibit, with silk on one side and cotton on the other?

A. We are.

27. Have you not been giving guarantees to parties purchasing elastic woven webbing of you to secure them from liability under complainant's patent?

A. We have given no written guarantees. When the subject has come up, we may have stated to some of our customers that counsel had advised us that M'r Smith had no claim in law, and that we would defend them against any claim he might bring.

28. State the names of such counsel.

(Objected to.)

357 A. M'r Gifford, of New York, and subsequently M'r Dean, of Boston, and later still, Judge Curtis, of Boston.

29. Was that advice by counsel given you in writing?

(Objected to.)

A. In no instance except Judge Curtis's.

30. What was the date of the time you received such advice of counsel?

(Objected to.)

A. I cannot state the exact date. The advice of M'r Gifford was given soon after M'r Smith made his claim in 1868. The opinion of Judge Curtis is on file in this case.

31. Was this advice given after complainant brought suit against you?

(Objected to.)

A. M'r Gifford's and M'r Dean's before; Judge Curtis's will speak for itself.

32. Had said counsel at that time certified copies of my reissue patent from the Patent Office?

(Objected to.)

A. I don't know. I presume they had. Judge Curtis had, I know.

33. Would it not have been very natural for them to have read parts of said patent to you and stated on what points they relied as to the invalidity of the claim?

(Objected to.)

A. I cannot answer.

358 34. Do you mean to say that you took advice of counsel as to the invalidity of complainant's claim, without the counsel having seen complainant's patent?

A. I stated that I presumed they had copies.

35. Did you not give verbal guarantees to purchasers before suit was brought against you?

A. Very few parties asked such guarantees. Those that did had such as I have stated before.

36. How many yards of woven elastic fabric have you sold since June 30, 1868?

A. We have sold a good deal, but I couldn't tell how much without reference to my books.

37. Will you consult your books and append such a statement to this deposition?

A. That I decline to do.

38. Examine Exhibits 1, 2, 3, and 4, and say if you consider those materials suitable for use in Congress boots.

A. I don't think they are suitable.

And in answer to cross-interrogatories by Benj. Dean, esq., deponent saith as follows, viz:

Cross 1. Before M'r Smith's last reissue, did you ever learn from M'r Smith the kind of webbing he claimed was an infringement of his patent? If yea, what kind?

A. In my conversations with M'r Smith I always understood it was goods made with two shuttles, covering more particularly Union goods,

Cross 2. Do you mean the silk-faced goods?

A. Yes; but I suppose you might make such goods entirely of cotton.

Cross 3. Did you ever hear him give as a reason for such claim that such goods could not be woven except upon his loom?

A. I understood that Union web could not be woven except

359 upon his loom. That was the impression I received from him.

And in answer to direct interrogatories, resumed, deponent saith:

39. Are you not aware that, according to the patent laws, a patent for machinery or for the process of making goods, does not cover the fabric made?

A. I am not competent to answer the question, not being acquainted with patent law.

40. Did not complainant say that the Union goods which he saw in your store could not be made except by his patent machinery, and that they were made by it?

A. I don't recollect his saying any particular goods were made by his patent, but that all Union goods must be so made.

41. Do you recollect showing complainant a large quantity of Union goods which you said you had of M'r Lovering, made by the Glendale

Company, and of which goods complainant made use of the expression above stated by me?

A. I don't recollect the circumstance, although it may have occurred.

N. NICHOLS.

BOSTON, *November* 14, 1868.

Mr George Pecker, bought of Nichols & Farnsworth, No. 63 *Hanover st., opposite American House. Terms,* 4 *months.*

D. 8 p's 3½ in. web..... 2.40 65 156

360 *Deposition of Henry L. Daggett, taken, subscribed and sworn to before N. Austin Parks, examiner, September* 6, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the sixth day of September, A. D. 1869, I caused to appear before me Henry L. Daggett, a witness on behalf of complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,

Examiner and Notary Public, County of Suffolk.

SEPTEMBER 6, 1869.

HENRY L. DAGGETT, recalled by complainant, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. Have you been before examined as a witness in either of these cases?

A. I have.

2. Look at the certified copy of assignment of William Smith to the Silk Manufacturing Company, and from Lawrence Campbell to
361 the Goodyear Elastic Fabric Company, marked Exhibit Z, and state if the last-named assignment was not made on the nineteenth of April, 1862.

A. It is impossible for me to say from my own knowledge whether the assignment was made at this date or not, I not having had personal knowledge of the transaction at the time it did take place.

3. Were you not told by different parties that complainant was in negotiation with parties in Boston to take that patent, prior to that assignment?

A. I was not; I never heard of it till I saw it in his pamphlet in 1867, according to the best of my knowledge.

4. What business was you engaged in when complainant saw you and M'r Lovering in conversation with John B. Hyde, or any other gentleman, at No. 23 Courtlandt street, New York, on the 19th April, 1862?

A. I've no knowledge of being in New York on that day. If I was

there, it was on business connected with the general interests of the Elastic Fabrics Company.

5. Do you recollect complainant coming into the room where you were at that time?

A. I recollect M'r Smith's coming to Courtlandt street, but the date I can't tell, for I don't know anything about it.

6. Did you hear the conversation that passed at that time between complainant and M'r Lovering? If yea, state, as nearly as you can, what it was.

A. I heard conversation between them; I could'nt say what it was. It had some reference to the purchase of his patent, but what it was I cannot say.

7. Was it not a caution to him against taking an assignment of complainant's patent by the company?

A. I think it was, but I couldn't state exactly the nature of it.

8. Examine Exhibits 1, 2, 3, and 4, and say if they could be of any use as goring for Congress boots?

A. These exhibits, as presented, are without elasticity, and for
362 that reason would not be useful for gores; Exhibit 3 has a little elasticity, but, as woven, not enough elasticity to be useful for the purpose inquired of.

9. Please state what amount of elasticity you consider necessary for woven elastic webbing, to be used as gores for Congress boots.

A. From twice to three times its natural length.

And in answer to cross-interrogatories by Benjamin Dean, esq., he saith:

Cross 1. When, according to your best recollection, did the conversation occur between M'r Smith and M'r Lovering, about which you have been interrogated?

A. I have no means of knowing, but have an impression that the Elastic Fabrics Company having been formed in 1860, the conversation referred to must have taken place within a year of the formation of that company.

Cross 2. Look at Exhibit No. 1, and state whether its want of elasticity or its limit of elasticity is not caused by the preponderance of the fibrous warp over the rubber; the fibrous warp being therein the controlling one?

A. It would appear, from examination, that there is not rubber of sufficient power put in to contract so heavy a web. It could have been woven more elastic by having a rubber cord of sufficient size to control the cotton warps. By such means, I think it could have been made elastic enough for shoe gores.

And in answer to direct interrogatories resumed, deponent saith:

10. Look at Exhibit No. 1 more carefully and see if the rubber has not contracted the weft-threads and brought them close together?

A. It would appear to me that in weaving this cloth the weaver
363 laid the weft threads as close, or about as close, as they are now. This was evidently intended for suspenders, where but little elasticity is required. If it had been designed to be more elastic, the weaver would not have laid the weft in so close together, and then the larger rubber cords would have contracted.

11. Have you sufficient knowledge of weaving to know that if sufficient rubber were put to Exhibit No. 1, it would contract and corrugate after the manner of Day's cemented corrugated rubber goods?

A. I've had no experience in weaving, but from observation should

say that if rubber cord of sufficient power had been used in this web, it would have contracted to present the appearance it has now, but not to corrugate it as in Day's goods.

12. Do you know what you have stated as an expert in weaving, or is it purely your imagination?

A. As I stated before, I am not a weaver by profession; I have studied into the matter somewhat, and it is my opinion that in practical working, it would produce the effect as I have stated.

HENRY L. DAGGETT.

Deposition of William R. Perkins, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 6, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the sixth day of September, A. D. 1869, I caused to appear before me William R. Perkins, a witness on behalf of complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several
364 answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this sixth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 6, 1869.

WM R. PERKINS, recalled by complainant, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. Have you been previously examined as a witness in either of these cases?

A. I have.

2. Please examine Exhibits 1, 2, 3, and 4, and say, from your knowledge and experience of the business, whether they could be of any use as gores for Congress boots.

A. I should say not.

3. What amount of elasticity, in your judgment, is required in woven elastic goring for Congress boots?

A. I should think it would possibly work at three times.

4. Would goring made after the manner of Exhibits 1, 2, 3, and 4 be of any utility, or salable, if inserted as gores for Congress boots?

A. I should say not.

And in answer to cross-interrogatory propounded by Benjamin Dean, esq., deponent saith as follows, viz:

365 Cross 1. Is the reason why they are unsuitable because other material than rubber preponderates, and they are not sufficiently elastic?

A. Yes; they are not sufficiently elastic, and you can't make it so with that material, without adding something to it.

W. R. PERKINS.

Deposition of Charles C. Nichols, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 6, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the eighth and ninth days of September, A. D. 1869, I caused to appear before me Charles C. Nichols, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name, and affixed my notarial seal of office, this ninth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 8, 1869.

CHA'S C. NICHOLS, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

366 A. Charles C. Nichols; age, forty-eight years; residence, Boston, Massachusetts; occupation, merchant, dealer in Yankee notions, small wares, etc.; have been in this business for twenty-four years.

2. Do you recollect a number of suspenders known as 48's?

A. I do.

3. Please describe the appearance of the webbing of which they were composed.

A. The web was slazy, very loose in texture, and didn't lie smooth when laid in the box; and sometimes the suspenders would curl around, and when taken out of the boxes they wouldn't hang straight.

4. How did it compare with Exhibit No. 2?

A. They were much lighter and looser. When they were stretched out you could see through them.

5. Did you ever purchase No. 48 suspenders from the Russell Manufacturing Co.? If yea, at what time first?

A. I first purchased from them in the years from 1849 to 1851, I think. I had previously purchased the same goods, with the same name on the boxes, from other parties.

6. Do you find any goods now in the market similar in appearance to these No. 48 goods?

A. I do not.

7. Did you write to a party at complainant's request, to try to procure an original sample of No. 48's, and to whom?

A. I did; to George S. Ballard, of Augusta, Maine.

8. What reply, if any, did M'r Ballard make to your letter?

A. Under date of August 27, 1869, he replies: "Yours of 25th is at hand. We have overhauled every old stock in town, in search of a pair of old 48 braces, but without success. The war and our heavy fire

cleaned up all old stocks, and we presume there is not a pair in existence in this section. We remember the brace well and should be glad to see more of them."

367 9. Examine Exhibit V and say how long it is since that style of goods first came into the market.

A. I should think fifteen years ago.

10. Examine Exhibit U and state how long they have been in the market.

A. I should say they came about the same time.

11. Look at Exhibit No. 3 and say if, when you first went into the business, there were in the market any goods similar to that.

A. I should say there was in 1848.

And in answer to cross-interrogatories by B. Dean, esq., he saith as follows, viz:

Cross 1. At the time that you were first dealing in elastic suspenders was there not a great variety of kinds in the market?

A. Not a great variety, I should say.

Cross 2. Did you deal in the more expensive or cheaper kinds; or both?

A. In both.

Cross 3. Did you sell imported and domestic-made elastic suspenders?

A. More of the domestic.

Cross 4. By whom were the domestic suspenders that you dealt in then made?

A. Purported to have been made by Russell Manufacturing Co.; Hotchkiss, Merriman & Co.; Warren, Newton & Co., and others whom I don't remember.

Cross 5. Have you samples of the goods which you then sold?

A. I have not.

CHARLES C. NICHOLS.

368 *Deposition of Marshall A. Lewis, taken, subscribed, and sworn to before N. Austin Lewis, examiner, September* 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that, on the eighth and tenth days of September, A. D. 1869, I caused to appear before me Marshall A. Lewis, a witness on behalf of complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me and a person appointed by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this tenth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 8, 1869.

MARSHALL A. LEWIS, being duly sworn, doth depose and say, in

answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Marshall A. Lewis; forty-six years of age; residence, Newton Corner, Mass.; occupation, dealer in cutlery, combs, and fancy goods.

2. How long have you been a dealer in suspenders?

369 A. I have been selling them since 1840; on my own account since 1846.

3. Do you remember a number of suspenders called "48's"?

A. I do.

4. Please describe the appearance of the webbing in those suspenders.

A. It was very much poorer in quality than Exhibit No. 2. It was very elastic and loose, and you could see daylight through it when it was pulled out; it was cockly when at rest in the boxes; it was made somewhat similar to Exhibit No. 2, but was very loose in texture, very much looser than the exhibit.

5. Did you ever purchase "No. 48's" direct from the Russell Manufacturing Co.?

A. My impression is that I have, but I couldn't swear to it positively, it is so long since. I feel quite positive that I have.

6. Do you remember that such goods were made by the Russell Manufacturing Co.?

A. Their name was on the ends of the boxes. I know that very well.

7. Do you find any similar goods to those No. 48 goods in market now?

A. No; none so poor as those in the market now, or that would resemble them in appearance. You might say it would resemble Exhibit No. 2 as one man resembles another, but not like it.

8. Look at Exhibit V and state when similar goods came into the market for sale.

A. I should say that those goods had been in the market since 1855; or certainly for ten, and not over fifteen years.

9. Look at Exhibit U and say about what time such goods came into the market.

A. I should say from ten to fifteen years ago.

370 10. In what years did you buy the greatest number of those No. 48 suspenders?

A. Between 1846 and 1851 I bought and sold a great many of them.

And in answer to cross-interrogatories by Benj. Dean, esq., deponent saith:

Cross 1. In 1846, when you commenced business on your own account, were there not a number of different kinds of elastic suspenders in the market?

A. I dealt only in the cheaper sorts of goods at that time; but I remember the "48" suspender as the leading suspender at that time.

Cross 2. Have you any means by which you can fix the time with any degree of exactness when the other kinds of suspenders shown you, viz, Exhibits U and V, were introduced into the market?

A. I can't tell with any certainty.

Cross 3. How long before you went into business do you remember the elastic suspenders?

A. It is impossible for me to say.

Cross 4. Were Exhibits U and V more expensive than the old "48"?

A. Yes, sir; very much more expensive.

Cross 5. May you not have seen suspenders like Exhibits U and V as many as twenty years ago?

(Objected to as leading and immaterial.)

A. I may have seen them or may not. I should say it was from ten to twenty years; I can't tell exactly.

Cross 6. Were you not aware, when you first went into business on your own account, that there were elastic suspenders in the market of kinds more expensive than you dealt in?

(Objected to as already answered.)

371 A. I can't answer that question because I paid no attention to anything that I could make no money in.

And in answer to direct interrogatories resumed deponent saith:

11. Have you continued dealing in suspenders from the time you first went into business till the present time?

A. I have.

12. You state in your cross-examination that you bought nothing that you thought you could make no money out of. Did you not see other kinds of goods when you purchased besides those that you bought, to judge which you could make money out of?

A. I can't answer that question.

13. Were Exhibits 2, 3 and 4 similar to those you saw then?

A. I remember suspenders similar to Exhibit 3, but Exhibit 2 I don't remember between 1846 and 1850. They may have been in the market but I don't remember.

14. Can you swear that you saw Exhibits U and V in the market before 1855?

A. I can't swear.

And in answer to cross-interrogatories resumed, he saith:

Cross 7. Did you ever purchase goods similar to Exhibit 1?

A. I should think I had.

Cross 8. Were these goods in the market as early as 1846?

A. I can't say.

Cross 9. Can you state when you first saw Exhibit 1 in the market?

A. I can't.

MARSHALL A. LEWIS.

Adjourned to Monday, 13th Sept., at 10 a. m.

372 *Deposition of George S. Winslow, taken, subscribed, and sworn to before N. Austin Parks, examiner, September* 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the eighth day of September, A. D. 1869, I caused to appear before me George S. Winslow, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by a person appointed by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof, I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this eighth day of September, A. D. 1869.

Attest:
[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public County of Suffolk.

SEPTEMBER 8, 1869.

GEORGE S. WINSLOW, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. George S. Winslow; age, fifty; residence, Boston; occupation, merchant.

2. How many years have you been dealing in suspenders?

A. About twenty years; I went into business twenty-one or twenty-two years ago, and commenced dealing in suspenders the second year.

373 3. When you first went into business, do you recollect a suspender "No. 48"?

A. I do.

4. Please describe what appearance it had in the webbing, to the best of your recollection.

A. It had a cockly appearance in the webbing, and it was rough; about 1½ or 1¾ inches wide, I should say; it was very elastic, and when pulled out you could see through it. I should say, from my recollection, that the strands of rubber were heavier strands than they put in now.

5. Did you ever purchase such goods of the Russell Manufacturing Company?

A. Yes, sir; I think I have. I used to buy a good many of their goods, "48's," and all numbers.

6. Look at Exhibit U and state, if you can, how long that style of goods has been in the market?

A. I can't remember about that, but I remember distinctly about "48's."

7. Can you state if it has been in the market more than fifteen years or less?

A. I remember it for twelve or fifteen years; I remember them for some years before I went into business with M'r Fosdick.

8. Look at Exhibit V, and state how long you remember that?

A. I don't remember it at all; I remember Exhibits 1, 2, 3, 4, and U.

9. Please look at Exhibit 3, and say if that was in the market when you went into business.

A. I can't say whether it was when I went in, but I remember the suspender a year or two afterwards.

10. Do you recollect a suspender which we now call "50"?

A. I don't recollect the webbing by that number.

11. Do you know any suspenders similar to the old "48's"?

A. I don't know of any.

374 Cross examination by Benjamin Dean, esq.:

Cross 1. How many different kinds of elastic suspenders were there in the market when you went into business?

(Objected to as immaterial.)

A. I don't know.

Cross 2. Were there not quite a number of kinds of elastic suspenders woven in different manners, some thick and heavy, others thin and light, some very elastic and some with little elasticity?

(Objected to as before.)

A. There were some that were more elastic than others, but I kept only the common or more medium kinds. There was some difference in respect to their thickness.

Cross 3. By medium kinds, do you mean a less expensive suspender?

(Objected to as before.)

A. Yes, sir.

Cross. 4. Were you aware of there being in the market varieties of elastic suspenders, not then kept for sale by you?

(Objected to as before.)

A. Yes, sir.

Cross 5. Can you describe how the various kinds kept by you were constructed or woven so far as to the manner in which the rubber threads or cords were held in the web?

(Objected to as before.)

A. No, sir; I cannot.

375 Cross 6. In your answer to the fourth direct interrogatory, you say that "when the '48' suspender was drawn out you could see through it." State whether there was not a piece of cloth woven between the rubber cords, and as it was stretched that piece of cloth became so open and the threads so far apart that you could see through the same between the rubber cords.

(Objected to as above.)

A. I don't remember about that.

Cross 7. Whereabouts in the suspender could you see through it if it wasn't between the rubber cords?

(Objected to as before.)

A. The 48 suspender, as offered for sale, looked thick and had apparently some substance to it, but when stretched and pulled out it looked much thinner, and you could see through it. Of course, I saw through it between the rubber cords.

Cross 8. When it was stretched could you see the rubber cords?

(Objected to as before.)

A. Yes, sir.

Cross 9. Was it not so constructed that the threads that ran across the suspender from side to side, that is, the weft threads, held the rubber cords in such a way that when the suspender was not stretched those threads lay side by side, close together, over the rubber cord, and when stretched those threads would be pulled apart so that you could see the rubber distinctly?

(Objected to as before, and as new matter.)

376 A. Yes; I should say that was a general description of the weaving of it, according to my recollection.

Cross 10. Is it not an accurate description of the manner in which the rubber cords were covered?

A. I couldn't say that it was.

Cross 11. Could you say that they were covered in any other way?

A. I could not.

Cross 12. Could you remember anything else as being over or under the rubber cords except the weft thread?

(Objected to as having been already answered, and as leading, and leading the witness to admit things which he doesn't intend to say.)

A. I should know a "48" suspender if shown to me, but I don't know how it was woven. I don't remember anything else over or under the rubber cords.

Cross 13. Was not "Exhibit No. 1" an article in the market, kept and sold by you, when you first went into business?

(Objected to as before.)

A. I don't remember having that suspender myself, but I remember seeing it.

Cross 14. Is there anything by which you can fix the number of years before you went into business with M'r Fosdick that you first had for sale suspenders like Exhibit U?

A. No.

Cross 15. Might not such suspenders have been in the market at the time you went into business?

A. Yes.

Cross 16. May you not have seen them as early as that?

A. I can't answer that question.

377 Cross 17. Is there no particular circumstance by which you can fix the time when your attention was first called to them?

A. I cannot.

And in answer to direct interrogatories resumed, de bene esse, he saith:

12. Look at Exhibit No. 2 and say if that exhibit was made very light, very little warp, and weft threads in them, and very elastic, so that when you stretched them out you could not see through them.

A. I couldn't say.

13. You spoke of the India-rubber threads in the old 48 being very coarse and strong. Can you say about how far they were apart?

A. I should say there was about half a dozen of them in the webbing, to the best of my recollection.

GEO. S. WINSLOW.

Deposition of Quincy Tufts, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the eighth and ninth days of September, A. D. 1869, I caused to appear before me Quincy Tufts, a witness on behalf of the complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to

378 writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this ninth day of September, A. D. 1869.

Attest:

[L. S.]

N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 8, 1869.

QUINCY TUFTS, being duly sworn, deposes and says, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Quincy Tufts; age, seventy-eight years; residence, Boston; occupation, dealer in dry goods.

2. How long have you dealt in suspenders?

A. For as much as fifty years.

3. Please take the suspender marked Exhibit W, N. P., Ex'r, and say how long ago you imported it.

A. I should say more than thirty years ago.

(Adjourned to 9th, at 10 a. m.)

Cross-examination by Benjamin Dean, esq.:

Cross 1. Do you remember having seen Exhibit W, or anything exactly like it, before?

A. Yes, sir; I think I have. To the best of my knowledge, I should say I had.

Cross 2. Thirty years ago did you sell different kinds of elastic suspenders?

(Objected to as immaterial.)

A. I should think so.

379 Cross 3. Can you describe how those different kinds were made, and how they resembled or differed from Exhibit W?

A. I could not possibly.

Cross 4. Have you continued to sell different kinds of elastic suspenders since that time?

(Objected to as immaterial.)

A. Yes, for a good many years.

Cross 5. Did you sell this Exhibit W?

A. I don't think I did personally.

Cross 6. When was it sold?

A. I couldn't tell, sir.

Cross 7. Do you sell suspenders like that exhibit now?

A. I don't think we do. We have a few on hand, but don't sell them much.

Cross 8. On reflection are you still unable to describe the difference between Exhibit W and the other suspenders you sold thirty years ago?

(Objected to as already answered.)

A. I am.

And in answer to direct interrogatories resumed deponent saith as follows, viz:

4. Did you not while giving your direct examination detach from the suspender marked Exhibit W a tag containing your private mark?

A. Yes; I took it off yesterday.

5. Look at Exhibit U, and say, to your best recollection, how long you have had suspenders made of such webbing for sale.

A. I should say from ten to fifteen years.

380 Cross-examination resumed:

Cross 9. Have you any means of fixing the time when you first had for sale suspenders like Exhibit U?

A. I have not.

Cross 10. Can you testify with positiveness that you did not have them for sale more than twenty years ago?

(Objected to as leading.)

A. I don't know that I could. I should think that I had.

Cross 11. Is it not possible that you may have had them for sale as much as twenty-five years ago?

(Objected to as already answered.)

A. Well, I couldn't say certain about it.

And in answer to direct interrogatories resumed he saith:

6. Can you say positively that you had them for sale more than ten years ago?

A. No, sir.

QUINCY TUFTS.

Deposition of Henry M. Snell, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the eighth day of September, A. D. 1869, I caused to appear before me Henry M. Snell, a
381 witness on behalf of complainant in the above-entitled case, and that he having been duly sworn to testify the whole truth and nothing but the truth relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence and by him subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this eighth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 8, 1869.

HENRY M. SNELL, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Henry M. Snell; age, thirty-nine years; residence, Boston, Massachusetts. Occupation, dealer in boot and shoe findings, of the firm of Pelton, Snell & Co., of Boston.

2. How long have you been acquainted with the shoe-finding trade, and with woven elastic webbings?

A. Since 1857.

3. Are you now giving, or have you prior to this time given guarantees to parties purchasing your web, either verbal or written?

(Objected to.)

A. We have not.

382 4. Have you told your customers that you would protect them against any suits that might be brought by me for infringing my patents?

(Objected to.)

A. No.

5. What amount of elasticity is, in your opinion, required in woven elastic webbing, for use in Congress boots?

(Objected to.)

A. I don't know.

6. If you were purchasing such goods for sale should you not test them to see how much elasticity was in them?

(Objected to.)

A. I should.

7. What amount of elasticity should you consider necessary to be satisfactory to your customers?

(Objected to.)

A. My department in the firm is particularly attending to the books, so that my knowledge of such details as you ask is not so practical as it otherwise would be. I should say, however, that the fabric should stretch from two to three times its length.

8. What amount of woven elastic goods have you sold since June, 1868, as near as you can state?

(Objected to.)

A. I haven't any idea of the quantity. I should think from 10,000 to 20,000 yards.

383 9. Will you give a statement from your books, and attach to this deposition, of the quantity so sold?

(Objected to.)

A. I shouldn't want to at this time; I decline doing so.

10. Examine Exhibits 1, 2, 3, and 4, and say if you consider them suitable for woven elastic goring for Congress boots?

(Objected to.)

A. I don't know; I shouldn't want them in my boots. I should think not.

(Counsel for respondents declines to cross-examine.)

HENRY M. SNELL.

Deposition of Samuel M. Bubier, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the eighth day of September, A. D. 1869, I caused to appear before me S. M. Bubier, a witness on behalf of the complainant in the above-entitled case; and that he having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to

384 writing in his presence, and by him subscribed in my presence, and are hereto annexed; and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office, this eighth day of September, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

SEPTEMBER 8, 1869.

SAMUEL M. BUBIER, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. Samuel M. Bubier; age, fifty-three years; residence, Lynn, Massachusetts; I am a shoe manufacturer.

2. How long have you been in that business?

A. About thirty years.

3. How much elasticity is required in woven elastic fabric to be used for gores in Congress boots?

(Objected to as immaterial.)

A. About two and a half times its length; more would be desirable, rather than less.

4. Examine Exhibits 1, 2, 3, and 4, and say if they are suitable for use as gores in Congress boots?

(Objected to as before.)

A. Not for anything I manufacture; and I should say they were not suitable for anything for Congress boots. They might answer for some kind of fancy slippers that I have seen.

5. State what kind of fancy slippers, and how you would insert the gores in them.

(Objected to as before.)

385 A. It is difficult for me to say. I have seen gores inserted in the front of a certain style of fancy slippers, and this material might answer for such purpose.

6. Would not any other fancy material inserted, without elasticity, be just as suitable for such purpose?

(Objected to as before.)

A. No; it wouldn't answer the purpose, because you couldn't advertise them as elastic gored slippers.

7. Do you know a firm of Reed, Jones & Co., of Columbus, Ohio?

(Objected to as before.)

A. I do.

8. Did one of the firm come to you in the latter part of 1868 to order Congress boots?

(Objected to as before.)

A. Yes.

9. Did you give him or promise him any guarantee against any claims made by complainant for infringing his patents?

(Objected to as before.)

A. I did not give any guarantee, nor did he ask it.

10. Have you ever advised or persuaded others not to use complainant's stamped web?

(Objected to as before.)

A. I couldn't say. I talk a good deal, and argue sometimes on both sides.

386 11. Haven't you called upon manufacturers to persuade them not to acknowledge my patent?

(Objected to as before.)

A. Not to my knowledge.

12. What amount of woven elastic goring have you sold since June, 1868?

(Objected to as before.)

A. I couldn't tell no more than the man in the moon without going over all my books.

13. Have you any objection to examining your books and annexing such a statement to this deposition?

(Objected to as before.)

A. Yes; most decidedly.

14. Have you any objection to having me, or some person appointed by me, examine your books for such purpose, without awaiting any process to compel their production?

(Objected to as before.)

A. I have.

Cross-examination waived by B. Dean, esq.

S. M. BUBIER.

Deposition of William Fosdick, taken, subscribed, and sworn to before N. Austin Parks, examiner, September 8, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the commonwealth of Massachusetts, in the United States

387 *Deposition of William Fosdick, taken, subscribed, and sworn to before N. Austin Parks, examiner, September* 9, 1869.

SEPTEMBER 9, 1869.

WILLIAM FOSDICK, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. William Fosdick; age, forty-eight years; residence, Boston, Mass.; occupation, dry goods jobber.

2. How long is it since you first knew of or sold gum elastic suspenders; and whether you still continue to sell the same?

A. I should think it was about fifteen years since I first began to sell them; I have sold them ever since.

3. How long ago did you first have knowledge of them in the market?

A. I should say fifteen or twenty years ago.

4. You heard yesterday the evidence of Geo. S. Winslow. Please state whether you can subscribe to the same evidence.

(Objected to as incompetent.)

A. I don't think my knowledge is so thorough as his on the subject; but in all points that I do know about, I should corroborate him.

5. Do you recollect an old suspender called 48's? If yea, please describe it.

A. I do. It was made from webbing, I should say, something short of two inches wide, perhaps 1¾ inches wide, which had a rough, puckery appearance. It was very elastic. On pulling it out as far as possible, you could observe the rubber strands appearing.

388 6. Had the rubber strands a thick, coarse appearance, when they were stretched out?

A. They had.

7. Did the strands appear coarse when unstretched or at rest?

A. I think what you could see of them did. The rubber would sometimes appear through the interstices of the weaving, and you could see a little of it.

8. About how many rubber strands were there in that web?

A. I should say from five to ten.

9. Is there any such goods in the market now?

A. I have not seen any for a long time.

10. State, as near as you can, how long it is since you saw such goods in the market.

A. I should say eight or ten years.

11. Look at Exhibit V and state when you first saw such goods in the market, to the best of your recollection.

A. I couldn't with any certainty fix the date.

12. Are any such goods now in the market?

A. I should say similar goods were in the market.

13. Look at the selvedge and then say.

A. My impression is, that selvedges are now woven differently on goods that otherwise appear similar.

14. Look at Exhibit U, and state, to your best knowledge, how long such goods have been in the market.

A. I should think ten or twelve years—perhaps fifteen.

15. Look at Exhibit No. 3, and say if you know of such goods being in the market; and, if yea, when?

A. I think I used to buy and sell such from fifteen to twenty years ago.

16. Was the old 48 suspender, before mentioned, made somewhat similar to No. 3, except in being very loose, coarse, and elastic?

A. The webbing was something narrower and rougher. In other respects, similar somewhat.

389 And in answer to cross-interrogatories by Benjamin Dean, esq., he saith:

Cross 1. You say in your direct testimony that in the 48 suspender you could see the rubber strands thro' the interstices in the weaving; were they not covered by the filling only; and was it not thro' the filling thread that you saw them?

A. You could see it thro' the filling threads when stretched. I couldn't say that the warp did not partially cover the rubber threads.

Cross 2. Do you remember any threads passing over the rubber strands, except the filling threads?

(Objected to as already answered.)

A. I could not say but what the warp and weft were both used to cover up the rubber.

Cross 3. Can you say whether it was so or not?

A. I cannot.

Cross 4. Can you fix the date when you first went into the business of dealing in elastic suspenders?

A. I should say in the vicinity of from fifteen to eighteen years ago.

Cross 5. Have you no means of fixing the date?

A. No, sir; not more precisely than that.

Cross 6. With whom did you then go into business?

A. I was in business on my own account exclusively, at that time.

Cross 7. Were many kinds of elastic suspenders then in the market?

(Objected to as immaterial.)

A. Not nearly the variety that there is at present.

390 Cross 8. Can you describe the different kinds that were in the market at that time?

A. They were all more common varieties—lower grades than we have now.

Cross 9. Can you tell how the rubber cords were covered in the varieties that then existed, so far as they came under your observation?

A. They were covered with the cotton fabric, but how far either the warp or weft contributed to cover I couldn't state.

Cross 10. Were there not elastic suspenders in the market of kinds differing from those you dealt in, and the construction of which you cannot describe?

A. It is possible that there were.

And in answer to direct interrogatories resumed, he saith:

17. Look at exhibits 2, 3, and 4, and say whether they were not of the principal kind then in the market.

A. It was those kinds with which I was familiar.

And in answer to cross-interrogatories resumed, he saith:

Cross 11. How was it with regard to Exhibit 1?

(Objected to, because he has already answered that he had no knowledge of such goods in the market at that early period.)

A. I couldn't say whether such goods were in the market or not.

WILLIAM FOSDICK.

391 Memorandum of goods consigned to Wightman & Willcox, by Hotchkiss & Merriman Manufacturing Company, referred to in Augustus Willcox's deposition, in question 10.

W. GRIER HIBLER,
U. S. Commissioner.

1847.

January 11.	No. 50.	20	doz.	gum	suspenders.
	51.	20	"	"	"
	52.	24	"	"	"
	53.	42	"	"	"
	54.	20	"	"	"
	56.	20	"	"	"
	57.	12	"	"	"
	58.	48	"	"	"
	60.	20	"	"	"
	66.	16	"	"	"
	67.	4	"	"	"
		24	"		elastics.
		200	"	col'd	spool cotton.
25.	59.	24	"	gum	suspenders.
	57.	10	"	"	"
	55.	18	"	"	"
	96.		"		elastics.
February 1.		26	"	Hales'	patent suspenders.
	67.	11	"	gum	suspenders.
13.	67.	12	"	"	"
	59.	12	"	"	"
	57.	20	"	"	"
March 6.	55.	6	"	"	"
	57.	18	"	"	"
	59.	12	"	"	"
	67.	12	"	"	"
15.	67.	10	"	"	"
	60.	12	"	"	"
	59.	6	"	"	"

392 1847.

	58.	20	"	"	"
26.	67.	12	"	"	"
	60.	22	"	"	"
	59.	8	"	"	"
	58.	42	"	"	"
	66.	4	"	"	"
April 12.	67.	12	"	"	"
	59.	30	"	"	"
	58.	24	"	"	"
	56.	20	"	"	"
	50.	20	"	"	"

		66.	8	doz.	gum suspenders.
			850	"	spool thread.
	24.	67.	20	"	gum suspenders.
		59.	16	"	" "
		55.	12	"	" "
May	3.	58.	36	"	" "
		54.	48	"	" "
		67.	12	"	" "
	24.	67.	24	"	" "
		59.	18	"	" "
		65.	6	"	" "
June	11.	60.	11	"	" "
		59.	18	"	" "
		67.	12	"	" "
		65.	8	"	" "
		55.	16	"	" "
			4	"	Hales' pat. "

We continued to receive gum suspenders from them, of the same class up to October 29, 1848.

A. WILLCOX.

393 *Deposition of Samuel M. Bubier, taken, subscribed, and sworn to before N. Austin Parks, examiner, October 29, 1869.*

OCTOBER 29, 1869.

SAMUEL M. BUBIER, recalled by complainant, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. Have you been previously examined as a witness in these cases?
A. I have.
2. Have you ever guaranteed any party against claim for infringing complainant's patent, either verbally or otherwise?
A. I don't recollect that I ever did.
3. Will you swear that you never did so?
A. I wouldn't want to swear that I ever did or didn't.
(This deposition objected to as incompetent.)

S. M. BUBIER.

Deposition of Isaac B. Boyce, taken, subscribed, and sworn to before N. Austin Parks, examiner, October 29, 1869.

OCTOBER 29, 1869.

ISAAC B. BOYCE, recalled by complainant, doth depose and say, in answer to interrrogatories propounded to him by William Smith, complainant, as follows, viz:

1. In your redirect examination, taken on the third of September, 1869, in answer to interrogatory 17, you have said that there was no understanding that complainant could "have the webbing cease from being stamped free of cost at any time he thought proper." Will you now state if there was any agreement between you and complainant that he could not have it so cease whenever he chose?

394 A. There was; it will be seen by reference to the agreement.
Cross-examination declined.

ISAAC B. BOYCE.

Deposition of William Faxon, taken, subscribed, and sworn to before N. Austin Parks, examiner, October 29, 1869.

OCTOBER 29, 1869.

WILLIAM FAXON, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. State your name, age, residence, and occupation.

A. William Faxon; age, thirty-eight years; residence, Boston, Massachusetts; occupation, merchant, and dealer in shoe findings.

2. Do you know Joseph S. Lovering; if yea, for how long have you known him?

A. I do. I have known him ever since I was a boy in a store.

3. Did you meet him in the cars in the year 1867, and have a conversation with him about the complainant in this case? If yea, state what that conversation was.

A. I did meet him in a five o'clock train on the Eastern Railway, in the summer of 1867, and had such a conversation with him. I mentioned to him that M'r William Smith (the complainant) was in Boston about his patent business. He said in an inquiring tone, "M'r Smith, M'r Smith? Who is M'r Smith?" I said, "Why, you know M'r Smith, that stout man who has been around so many years about his patent," or something to that effect. He still appeared to ignore him, and said, waving his hand, "It's all humbug; there's nothing in it," or something of that kind.

395 4. Have you had any mercantile transactions with M'r Lovering, or the firm of which he is a member? If so, for how long?

A. Yes, off and on for a dozen years past; that is, with his firm.

Counsel for respondents declines to cross-examine.

WILLIAM FAXON.

Deposition of Nathan Nichols, taken, subscribed, and sworn to before N. Austin Parks, examiner, October 30, 1869.

OCTOBER 30, 1869.

NATHAN NICHOLS, recalled by complainant, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. Look at complainant's Exhibit Y, and say if you have sold similar goods, both Union and all silk, during all the year 1868?

A. I have sold web like Exhibit Y, and I have sold webbing known in the trade as all-silk web, during the time inquired of; but whether either of these goods infringe the complainant's patent, I do not know.

Cross-examination declined.

N. NICHOLS.

396 In the circuit court of the United States. In chancery.

WILLIAM SMITH
vs.
J. T. WHITEHOUSE AND OTHERS. } Southern district of New York.

SAME
vs.
NATHAN NICHOLS. } District of Massachusetts.

SAME
vs.
GLENDALE ELASTIC FABRICS CO. } District of Massachusetts.

SAME
vs.
ITHIEL F. FARNHAM. } Northern district of Illinois.

397 At Chicago, in said northern district of Illinois, on the 20th day of September, A. D. 1869, before J. L. High, special examiner.

Present, S. A. Goodwin, esq., of counsel for complainant; Mess'rs Hitchcock, Dupee & Evarts, of counsel for defendants.

At 10 o'clock a. m. on said day the parties met by their counsel as aforesaid, whereupon complainant offers in evidence original letters patent, granted to Enoch Thomas, March 12, 1840, for an "Improvement in surgeon's trusses," No. 1511, marked Exhibit A to Thomas' second examination.

By consent of counsel, an adjournment was then had subject to further notice.

J. L. HIGH, *Examiner.*

At Chicago, in said northern district of Illinois, on the 24th day of September, A. D. 1869, before J. L. High, examiner.

Present, S. A. Goodwin, esq., of counsel for complainant, and Edward S. Evarts, esq., of counsel for defendants.

D. HOBART HILLS, a witness called on behalf of complainant, being first duly sworn, was examined in chief by M'r Goodwin, and deposed as follows:

1. Q. What is your name, age, occupation, and residence?

A. My name is D. Hobart Hills; age, 42; occupation, boot and shoe dealer; residence, Chicago.

398 2. Q. Are you one of the several defendants in the cases of the Smith llastic fabric patents?

A. Yes.

3. Q. Are you selling boots and shoes with the elastic gore in them?

A. Yes, sir.

4. Q. Please state what knowledge you have of any combination between these defendants, or any of them, in Chicago, and Nathan Nichols, or the Glendale Elastic Fabric Company in Massachusetts, or J. T. Whitehouse in New York, for the purpose of defeating M'r Smith's patent?

A. We all united together and employed one lawyer to conduct the cases, to save the expense of having each one a separate lawyer. The parties East I don't know anything about.

5. Q. Do you know of any of the parties sued in Chicago, and defending Smith's suits, having contributed anything, in money or otherwise, to the defense of the suits in Massachusetts?

A. No, sir. I don't know anything of that kind.

6. Q. Have you, or has your house, ever paid any money for that purpose?

A. No, sir.

7. Q. State what knowledge you have, if any, and how the fact is, of Nathan Nichols, of Boston, or the Glendale Elastic Fabric Company, of Massachusetts, or J. T. Whitehouse, of New York, having contributed anything, in money or otherwise, towards the defense of these suits in Chicago?

A. I know nothing about it, sir.

8. Q. State whether or not you have any knowledge of any parties out of Chicago being backers or guaranty for any of these defendants in Chicago in selling elastic fabric goods?

A. I don't know of any.

9. Q. Has your own house been indemnified by anybody?

A. No, sir.

399 10. Q. Are you defending upon your own hook, or have the parties from whom you purchase goods indemnified you in any way?

A. No, sir; not at all.

11. Q. They pay nothing for your defense?

A. No, sir.

12. Q. How long have you been in the trade of selling boots and shoes with the elastic fabric gores?

A. I have been selling goods between 23 and 24 years here. I don't know what time this elastic fabric business first commenced, but not as long ago as that. I presume we have been selling them several years, ever since they came out.

13. Q. State if you know what amount of elasticity is required in woven elastic webbing to be suitable to the shoe trade for gores for Congress boots?

A. I don't know, I am sure.

14. Q. Do you mean then to say that you can't state—that you have no opinion upon it?

A. No, sir.

Cross-examination waived.

D. HOBART HILLS.

Sworn and subscribed to before me this 28th day of September, 1869.

J. L. HIGH,
Special Examiner.

GEORGE W. ORDWAY, a witness called on behalf of complainant, being first duly sworn, was examined in chief by Mr Goodwin, and deposed as follows:

1. Q. What is your name, age, occupation, and residence?

A. My name is George W. Ordway; age 35; residence Chicago; occupation selling boots and shoes.

400 2. Q. Are you one of the several defendants in the cases of the Smith elastic fabric patent?

A. Yes.

3. Q. Are you selling boots and shoes in your business with the elastic goring?

A. We are.

4. Q. Please state what knowledge you have of any combination between these defendants, or any of them, in Chicago, and Nathan Nichols, or the Glendale Elastic Fabric Company in Massachusetts, or J. T. Whitehouse in New York, for the purpose of defeating M'r Smith's patent?

A. I understand that the defendants in Chicago have employed counsel to attend to their interest in these cases, but I know of no combination between them and the parties named. There has been nothing of that kind with my consent or knowledge.

5. Q. Do you know of any of the parties sued in Chicago, and defending Smith's suits, having contributed anything, in money or otherwise, to the defense of the suits in Massachusetts?

A. I do not.

6. Q. Have you or has your house ever paid any money for that purpose?

A. Not any.

7. Q. Have you done the same thing with J. T. Whitehouse in New York?

A. No.

8. Q. State what knowledge you have, if any, and how the fact is of Nathan Nichols, of Boston, or the Glendale Elastic Fabric Company, of Massachusetts, or J. T. Whitehouse, of New York, having contributed anything, in money or otherwise, towards the defense of these suits in Chicago?

A. I haven't the slightest idea.

9. Q. State whether or not you have any knowledge of any parties out of Chicago being backers, or guaranty, for any of these defendants in Chicago in selling elastic fabric goods?

A. Houses have agreed to sustain me in selling them.

401 10. Q. State who they are.

A. S. N. Bubier, of Lynn, Massachusetts; he guaranteed, when I bought the goods of him, that I should be held harmless in the selling of them. It was a verbal pledge that he would see me harmless against any loss from suits in regard to any patent of that kind. Also, John Wooldridge, of Lynn, did the same; no others that I recollect of.

11. Q. What amount of goods of this character did you purchase of those two houses of Bubier and Wooldbridge at the time, upon which this guarantee was made?

A. Perhaps $15,000 of both of them.

12. Q. Can you say how much of each?

A. No, sir; I would not buy without it, because there was some trouble made about it.

13. Q. How long have you been in the trade of selling boots and shoes with the elastic fabric gores?

A. Certainly since 1851—before that I don't recollect; I know in 1851 we were selling goods of this kind.

14. Q. State, if you know, what amount of elasticity is required in woven elastic webbing to be suitable to the shoe trade for gores for Congress boots?

A. I can't tell you; I know when I feel of them and pull them, but I haven't any idea how to tell you.

15. Q. Do you mean then to state that you can't say that you have any opinion upon it?

A. Yes.

Cross-examination waived.

GEO. W. CRDWAY.

Sworn and subscribed before me this 28th day of September, 1869.

J. L. HIGH,
Special Examiner.

Further taking of testimony was thereupon postponed until further notice.

J. L. HIGH,
Examiner.

402 At Chicago, in said northern district of Illinois, on this 4th day of October, 1869, before J. L. High, special examiner.

Present, S. A. Goodwin, esq., of counsel for complainant; C. Hitchcock, esq., of counsel for defendants.

ENOCH C. THOMAS, a witness called on behalf of said complainant, being first duly sworn, was examined in chief by Mr Goodwin, and deposed as follows:

1. Q. What is your name, age, occupation, and residence?

A. My name is Enoch C. Thomas; age, 66; occupation, physician; residence, Batavia.

2. Q. Where did you reside in March, 1840?

A. In Athens, Harrison Co., Ohio.

3. Q. State whether, in 1840, you made any application to the Patent Office for a patent; and, if so, what?

A. I did, for an improvement in surgeons' trusses.

4. Q. Did you receive a patent for the same?

A. Yes, sir.

5. Q. Look at the original patent, marked "Exhibit A," now shown to you, with the specifications and drawings, and state whether that is the patent which you obtained, and whether you are the Enoch Thomas therein referred to.

A. That is the patent, and I am the Enoch Thomas therein spoken of.

6. Q. Did you make, or cause to be made, a model of the truss referred to in that patent, and deposit it in the Patent Office?

A. Yes, sir.

7. Q. Was the drawing annexed to the patent made under your direction; and state how the coloring of the respective parts in the drawing compared with the coloring in the model?

A. The model and drawing are exactly alike; in other words, the drawing is a fac simile of the model in color as well as form.

8. Q. How long before the date of the patent, which is the 12th of
403 March, 1840, is it your recollection that the model and drawings were deposited in the Patent Office?

A. I think they were deposited in December previous; I can't say positively.

9. Q. Did you ever deposit more than one model of any description in the Patent Office, having reference to any such invention, or any other?

A. I deposited but one model in regard to trusses, one for fractured limbs; only one model of a truss, or improvements in trusses.

10. Q. What was the nature and character of that improved truss, in brief?

A. I called it "Thomas' Hernial and Uterine Elastic Spring Supporter."

11. Q. Please state what you used on the model, deposited by you, for the belt of said truss; describe particularly the fabric, in texture, form, and proportions.

A. The belt was white cotton fabric, with a rubber cord or thread enclosed in a tube, I think, an inch and a-half wide, cotton, and heavy for that purpose, for a belt. It was called elastic suspender webbing. Its elasticity was light—it was not designed to give but a little. It was procured from Europe; I couldn't find any elastic of home manufacture; its color was white.

12. Q. State whether, on that model, you used any half-inch suspender webbing of any kind, either elastic or non-elastic?

A. No.

13. Q. Did you use any elastic or non-elastic webbing on that model of a green color, or any other color than white?

A. No.

14. Q. A white one, 1½ inches wide?

A. Yes, sir.

15. Q. Did you use, on any model whatever, deposited by you in the Patent Office in 1840, or at any other time, any webbing, elastic or
404 otherwise, except what you have now stated, on the model accompanying your application for the patent, Exhibit A?

A. No.

16. Q. State whether or not every part of the model deposited by you is described in the specifications of the patent for your truss, both as to the form and coloring of its respective parts.

A. Yes.

17. Q. Look at the webbing now shown to you, colored green and pink, and hereto attached by the examiner, and by him identified and marked Exhibit B, and state whether you have deposited in the Patent Office any model having a webbing of that description upon it, as belt, or in any other form?

A. No.

18. Q. Did you ever use any such in any connection in your experiments, or under your patent?

A. No.

19. Q. Did you ever put any such upon any model?

A. No.

20. Q. State how the stitch on the model of the truss deposited by you was made?

A. A flat awl and a chain stitch.

21. Q. Fine or coarse?

A. Fine.

22. Q. Describe its general appearance.

A. A very close and fine stitch with red silk, and having rather a nice appearance.

23. Q. Did you bring your invention, afterwards patented, into use, and use it, and manufacture trusses?

A. Yes.

24. Q. State whether you ever granted any licenses, or sold any rights under that patent.

A. No.

25. Q. To no one?

A. To no one.

26. Q. Has the patent now expired?

405 A. Yes, sir; they were manufactured and used by me always.

27. Q. Did you ever use any other material for the belt than that you have described as put in the model?

A. No.

28. Q. Neither in form or texture?

A. No, sir.

Cross-examination by M'r Hitchcock:

Cross 1. Q. Have you ever seen this model since you deposited it in the Patent Office?

A. No.

Cross 2. Q. Have you ever made any examination for the model in the Patent Office since you left it there?

A. No, sir.

Cross 3. Q. Was there any other elastic material used about the model except as you have stated?

A. No, sir.

Cross 4. Q. How many of these supporters did you construct under your patent?

A. They were used, or manufactured and used in my business for some 12 or 14 years.

Cross 5. Q. Where did you manufacture, and where use them?

A. At Athens, Harrison Co., Ohio.

Cross 6. Q. During what years did you manufacture and use them there?

A. From 1840 to 1849.

Cross 7. Q. Who were the workmen that manufactured them for you at Athens?

A. I can't recall his name now.

Cross 8. Q. What was his business?

A. He was a saddler.

Cross 9. Q. Do you know whether he lives there now, or not?

A. He is not there.

Cross 10. Q. Where does he live now?

406 A. His parents lived in Pennsylvania at the time. His brother was going to school at the college at Athens there, and he came there and boarded, and worked at the saddler's business, and followed it two or three years. They were afterward under the control of a man named Estep, who was a student of mine, and in my business was my agent, and had the selling of them. He sold them in Wheeling.

Cross 11 q. What part of Pennsylvania was this saddler from?

A. He was from Greene Co.

Cross 12 q. What was M'r Estep's full name?

A. William.

Cross 13. Q. Where does he now live?

A. I don't know.

Cross 14. Q. Will you give the names of parties who used this supporter in your practice?

A. I don't know who used those that were taken to Wheeling. They were used by my individual application most of them.

Cross 15. Q. State the names of the parties to whom you supplied them—the names of your patients to whom you applied them, and their residences.

A. The wife of William Cannon, who lived in Harrison Co., Ohio; his post-office would be Athens.

Cross 16. Q. Where does William Cannon or his wife live now?

A. I am not able to say.

Cross 17. Q. To what other party did you apply them?

A. This Estep's wife had one. It's very difficult for me to remember the names.

Cross 18. Q. Remember all that you can.

A. I think the wife of Steven Shepherd at Athens, and he lived near Flushing, Ohio.

ENOCH THOMAS.

Sworn and subscribed before me this 4th day of October, A. D. 1869.

J. L. HIGH,
Examiner.

407 Further proceedings were then suspended subject to be resumed by consent of counsel.

J. L. HIGH,
Special Examiner.

At Chicago, in said northern district of Illinois, on this 5th day of October, 1869, before J. L. High, examiner.

Present, S. A. Goodwin, esq., of complainant's counsel; C. Hitchcock, esq., of defendants' counsel.

GEORGE E. P. DODGE, a witness called on behalf of complainant in said cause, having been first duly sworn, was examined in chief by M'r Goodwin, and deposed as follows:

1. Q. What is your name, age, occupation, and residence?

A. My name is George E. P. Dodge; age, 30; occupation, boot and shoe dealer; residence, Chicago.

2. Q. Are you one of the several defendants in the cases of the Smith Elastic Fabric Patent?

A. Yes, sir.

3. Q. Are you selling boots and shoes with the elastic gore in them?

A. Yes, sir.

4. Q. Please state what knowledge you have of any combination between these defendants, or any of them, in Chicago, and Nathan Nichols, or the Glendale Elastic Fabric Company in Massachusetts, or J. T. Whitehouse in New York, for the purpose of defeating M'r Smith's patent.

A. I have lately met a man named Whitehouse in New York, but know of no combination of the kind referred to with him or any one else. I have never heard of Nathan Nichols or the Glendale Elastic Fabric Company. All I know of the defendants here is simply Smith or his agent came around and notified us not to sell any more goods. He notified, I guess, all the shoemakers at the same time, and he came around with a paper asking us if we were willing to pay what he demanded, or whether we would defend the suit, and I told him we were with the others.

408 5. Q. Do you know of any of the parties sued in Chicago, and defending Smith's suits, having contributed anything in money or otherwise to the defense of the suits in Massachusetts?

A. No, sir.

6. Q. Have you or has your house ever paid anything for that purpose?

A. Not to my knowledge.

7. Q. State what knowledge you have, if any, and how the fact is, of Nathan Nichols, of Boston, or the Glendale Elastic Fabric Company, of Massachusetts, or J. T. Whitehouse, of New York, having contributed anything, in money or otherwise, towards the defense of these suits in Chicago.

A. I know of nothing of the kind.

8. Q. State whether or not you have any knowledge of any parties out of Chicago being backers or guaranty for any of these defendants in Chicago in selling elastic fabric goods.

A. The next time I went down East, after the trouble here, I asked the manufacturers what was to be done about it, and they said nothing. They said there was nothing for us to defend, because there was no case against us. No one ever agreed to back us up that I know of, or took any interest whatever.

9. Q. Has your own house been indemnified by anybody?

A. No, sir.

10. Q. Are you defending on your own account, or have the parties from whom you purchase goods indemnified you in any way?

A. We are defending on our own account.

11. Q. Do they pay anything for your defense?

A. No, sir.

12. Q. How long have you been in the trade of selling boots and shoes with the elastic fabric gores?

409 A. I have been wholesaling six years. I was retailing, I should think, eight years before.

13. Q. State if you know what amount of elasticity is required in woven elastic webbing to be suitable to the shoe trade for gores for Congress boots.

A. I can't tell you. I never examined a gore in any way to find out.

14. Q. Do you mean then to say that you can't state—that you have no opinion upon it?

A. I know nothing about it.

Cross-examination waived.

GEO. E. P. DODGE.

Sworn and subscribed before me this 5th day of October, 1869.

J. L. HIGH,
Special Examiner.

Adjourned subject to further notice.

J. L. HIGH,
Special Examiner.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, James L. High, special examiner, do hereby certify that the foregoing depositions were taken by and before me, by consent of counsel, as therein appears; that the parties to said causes were represented at the taking of the same by their counsel as therein appears; that each of said witnesses, before testifying, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in the causes aforesaid; that their depositions were by me reduced to writing from their statements, and that they afterwards subscribed the same in my presence.

410 And I do further certify that I am neither attorney nor of counsel for any of the parties in said depositions, and am in nowise interested in the result of either or any of the causes aforesaid.

In witness whereof I have hereunto set my hand and official seal at Chicago, this 6th day of October, 1869.

[L. S.]

J. L. HIGH,
Special Examiner.

411 U. S. circuit court, southern district of New York.

WILLIAM SMITH *vs.* JOS. T. WHITEHOUSE.	In equity.
SAME *vs.* MANY OTHER DEFENDANTS.	
WILLIAM SMITH *vs.* THE GLENDALE ELASTIC FABRICS COMPANY.	
THE SAME *vs.* NATHAN NICHOLS.	In the district of Massachusetts.
SAME *vs.* ITHIEL F. FARNUM.	Northern district of Illinois.

412 NOVEMBER 3d, 1869—10 a. m.

Present, counsel for the respective parties.

W. C. Witter, of counsel for defendants, objects to any testimony taken for other districts than the southern district of New York, for the reason that no notice has been served for any other district, and for the reason that the time for taking testimony in some of the suits is already expired.

JONATHAN N. TIFFT, being called as a witness for the plaintiff, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Jonathan N. Tifft; was 41 years of age last June; I reside in the city of New York; I am a banker and agent of the Mexican government.

2. Q. Before you were in this business, what was your business?

A. Immediately preceding, agricultural implements.

3. Q. Before that business, what business were you in?

A. The sale of India-rubber goods.

4. Q. Were you in partnership in 1854; and if so, with whom?

A. With John W. Corlies, my present partner.

5. Q. Were you in 1854 familiar with the different elastic fabrics in the market?

A. I think I was.

6. Q. Will you look at Exhibit A, R. A. S., and state when you saw such goring in the market?

A. I can't tell you the precise year, but I think I was first shown it by M'r Smith who is now present; it was about 1854.

413 7. Q. State whether or not you were M'r Smith's agent for its sale; and if so, how long.

A. We were, and I think for two or three years.

8. Q. During that time was there any other woven elastic goring of American manufacture like Exhibit A in this market?

A. I don't think there was, sir.

Cross-examined de bene esse:

Cross 9. Q. Where was your place of business in the year 1854?

A. At 32 Dey street.

Cross 10. Q. How long had you been in the business of selling rubber goods at that time?

A. I think about 7 years; not all the time for myself, but a portion of the time as clerk in the concern which I succeeded; that firm was Church and Chittenden, and I was clerk for it and its predecessors; there were three concerns before that, all of them in the rubber business, with whom I was clerk.

Cross 11. Q. How are you enabled to fix the date when you first saw webbing like Exhibit A?

A. Because of my knowledge of the goods in the market at that time, my recollection that M'r Smith first showed it to me, and my belief that it was about that time we first became his agents.

Cross 12. Q. Is that all the reason you have for thinking it was in 1854 when you first saw goods like Exhibit A?

A. From my general recollection of our business, I think it was about that time; I can tell from my books, if I can find them.

Cross 13. Q. Will you look at your books, and furnish a memorandum which will verify your statement?

A. Well, I will try to do so; many of our old books are destroyed, we having changed our business; a portion of them relating to business at about that date are packed and stored away, and would be very inconvenient to get.

414 Cross 14. Q. What was the nature of your agency for M'r Smith?

A. We sold his goods on commission.

Cross 15. Q. What commission did you receive from him?

A. I think we charged him 10 per cent.; I do not remember for certain.

Cross 16. Q. To what persons or firms did you sell his goods in 1854?

A. That I do not remember.

Cross 17. Q. Can you swear that you sold them to any person or firm in that year?

A. I know that we sold a good many of his goods while we were his agents; if it was that year that we were his agents (and I think it was), then we sold them in that year.

Cross 18. Q. Will your books, if they can be found, show to whom you sold M'r Smith's goods, if any, in that year?

A. Undoubtedly they will.

(Complainant's counsel calls for production of these books, or a sworn memorandum therefrom, as the best evidence.)

Cross 19. Q. Did you ever before 1854 sell any kind of elastic shoe-goring different from Exhibit A?

A. I did; what we called Day's shirred goods.

Cross 20. Q. What is the difference between what you call Day's shirred goods and Exhibit A, by which you are enabled to identify Exhibit A as the kind of webbing you sold for M'r Smith?

A. Exhibit A is woven; Day's shirred goods are made by putting stretched strips or threads of rubber between two thicknesses of silk, muslin, or other material.

Cross 21. Q. Did you not sell or know of elastic shoe-goring in this country previous to 1854, that was neither M'r Smith's nor the shirred goods referred to?

A. Not to my knowledge.

415 Cross 22. Q. How do know that the goods you say you sold in or about 1854 were like Exhibit A?

A. From my perfect familiarity with the goods and with the rubber trade.

Cross 23. Q. Do you judge from the external appearance of this fabric, Exhibit A, in making this statement?

A. From its general appearance and feeling.

J. N. TIFFT.

Subscribed and sworn to before me this 3d Nov., 1869.

R. E. STILWELL,
Examiner, &c.

MATTHEW ARMSTRONG, being called as a witness for the plaintiff, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence and occupation?

A. My name is Matthew Armstrong. I am 45 years of age. I reside in Greenville, New Jersey. I am in the leather and shoe-finding trade.

2. Q. How long are you in that trade?

A. Twenty years and over.

3. Q. State the name of your firm.

A. M. Armstrong and Sons.

4. Q. What is your brother's name?

A. John Armstrong.

5. Q. Do you know M'r Smith, and how long have you known him?

A. I think I have known him 10 years.

6. Q. Did Mr. Smith ever bring you his patent papers, and submit them to your examination; and, if yea, when?

A. He brought them to me a year, or perhaps eighteen months ago.

416 7. Q. Did you examine them?

A. Yes, sir.

8. Q. State what, if any, conclusion you came to in regard to them?

A. I thought they were so complete as to render the statements he had made satisfactory to me.

9. Q. Did your house then take a license from M'r Smith?

A. We took a license either before or at that time. I think before, on the strength of his representations.

10. Q. Do you still stamp your goods with M'r Smith's stamp?

A. The salesman at our place have orders to still continue the use of the stamp, until M'r Smith notifies us that we need not buy them.

11. Q. When M'r Smith brought you his papers, did he say anything about suing you; and, if yea, what?

A. I do not remember that he ever threatened us with any suit.

12. Q. Did he say whether he would sue you or not?

A. He never threatened us, as I remember, with any suit.

13. What was said between you and M'r Smith about suits when he asked you to take a license, or when he brought you the patent papers?

A. He said he intended to institute suits against parties who made, used, or sold the goods on which he claimed the patent; my impression was at the time that he did not intend to sue us.

Cross-examined de bene esse:

Cross 14. Q. You say you have examined the patent of M'r Smith. What patent have you examined, and what did you consider its scope?

A. M'r Smith brought to me envelopes, marked from the Patent Office at Washington, directed to him, which enclosed three different

417 papers, giving to him the patent right for the machinery to make elastic fabric, and for making the fabric itself.

Cross 15. Q. Did you consider that M'r Smith enjoyed the right under these papers to the machinery, and to the process of making all kinds of elastic fabric?

(Objected to as immaterial.)

A. I did.

MATTHEW ARMSTRONG.

Subscribed and sworn to before me this 3d November, 1869.

R. E. STILWELL,
Examiner, &c.

HUBBARD G. BRADLEY, *being* called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Hubbard G. Bradley. I am 45 years old. I reside at the town of Norfolk, S't Lawrence County. I am a dealer in Yankee notions.

2. Q. Have you ever been engaged in buying and selling suspenders; and, if so, how long?

A. More or less for 24 years.

3. Q. Will you look at defendants' Exhibit No. 1, R. E. S., and state when you first saw such goods in the market, as nearly as you can?

A. My impression is that it is some fifteen years, or thereabouts. I cannot be positive about it; if I had my bills it might alter it years.

4. Q. What kind of suspenders was in the market when you first began business?

A. There is such a variety, I could not tell you.

418 5. Q. Will you look at defendants' Exhibit No. 3, and state when you first saw suspenders like that in the market?

A. I cannot tell.

6. Q. State whether it was before or after you saw suspenders like defendants' Exhibit No. 1.

A. I think it was after.

7. Q. Will you look at defendants' Exhibit No. 8, and state when you first saw suspenders in the market like that?

A. I can't tell, sir.

8. Q. Was it before or after you saw defendants' Exhibit No. 1?

A. It was after. I don't claim but what it may have been in the market before that. I don't know anything about that.

9. Q. State whether or not the goods like defendants' Exhibits Nos. 3 and 8 were manufactured by the American Manufacturing Company, or purported to be so manufactured?

A. They were claimed to be American goods; that suspender, Exhibit No. 3, I should say was manufactured by the American Manufacturing Company. I cannot tell about No. 8.

Cross-examined de bene esse:

Cross 10. Q. Do you judge from the general appearance of these exhibits in making your answers, or how otherwise?

A. From general appearance.

Cross 11. Q. State, if you can, what elements make up the general appearance to which you allude.

A. The color has nothing to do with it; the elasticity has. I cannot answer the question in any other way, except from the general appearance of the goods, which I have been handling for years.

H. G. BRADLEY.

Subscribed and sworn to before me this 3d November, 1869.

JOHN A. SHIELD,
Examiner, &c.

419 DANIEL S. HAMMOND, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Daniel S. Hammond. I am 43 years of age. I reside in Brooklyn, 322 Adelphi street. I am a manufacturer of traveling bags.

2. Q. Were you ever in the suspender business? And if yea, say when you first entered into that business, and when you left it.

A. I was; I entered into it about the first of January, 1848; the last of my dealings in that business was in 1855.

3. Q. During the time you were in business did you purchase suspenders of the Russell Manufacturing Company?

(Objected to as leading.)

A. Yes, sir.

4. Q. If you purchased from any other company please say who they were.

A. I purchased a few, a small amount, from Hotchkiss and Merriman Manufacturing Company; I think it was about that time or soon after; what I refer to by soon after is simply this: I meant to say that I did not know whether it was before or after they had become a corporation.

5. Q. Please look at complainant's Exhibit No. 2, marked N. A. P., and say who was the manufacturer of goods similar to said exhibit, and what number did they go by?

(Objected to as leading.)

A. The Russell Manufacturing Company; it is number 50.

6. Q. Please look at complainant's Exhibit No. 1, marked N. A. P., and state, as near as you can, when such kind of goods first came into the market.

A. I don't remember seeing this pattern before 1855 or 1856.

420 7. Q. Please look at complainant's Exhibit S, marked N. A. P., and state when you first saw such goods in the market.

A. I don't remember seeing that pattern in the early part of my dealing.

8. Q. Please state if it was or was not in the latter part of your dealing in the trade that you first saw it.

A. I think it was.

9. Q. Please look at complainant's Exhibit T, marked N. A. P., and state at what period in your dealings in the trade those first came into the market.

A. I don't remember to have ever sold such.

10. Q. Please state if you remember a suspender called 48.

A. I do.

11. Q. State, if you can, how long it is since they appeared in the market.

A. That I don't know.

12. Q. Were they in the market all the time you were in trade in suspenders?

A. Yes.

13. Q. Please to describe them to the best of your recollection—what they were.

A. They were coarse open goods.

14. Q. Can you say there are any such goods in the market now?

A. I have not seen such.

15. Q. Have you seen anything like them in the exhibits shown to you in this examination?

A. No, sir.

16. Q. When did you first purchase suspenders of the Russell Manufacturing Company?

I could not tell the month; it was in 1848.

DANIEL S. HAMMOND.

Subscribed and sworn to before me this 3d Nov., 1869.

JOHN A. SHIELD,
Examiner, &c.

Adjourned to November 4, 1869, at 11 a. m.

421 THURSDAY, *Nov.* 4, 1869.

Present, counsel for the respective parties.

CALEB HOLT, being called as a witness for complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Caleb Holt. I am 43 years of age. I reside in Brooklyn. I am a merchant.

2. Q. For how long a period of time have you been acquainted with woven elastic fabrics for suspenders?

A. 23 years.

3. Q. What was the first style of suspender that you saw in the market for sale?

A. Suspenders like complainant's Exhibit A. A., R. E. S.

4. Q. Will you look at complainant's exhibit, marked D. D., R. E. S., and state when you first saw such suspenders for sale in the market?

A. About the year 1855—in the spring or summer.

5. Q. State whether or not elastic suspender fabrics which were in the market prior to 1854 or 1855 were adapted for use for gores for boots and shoes, and state your reasons for the opinion you give in answer to this question?

A. There were not any woven webb with rubber inside adapted to that use in the market at that time; my reason for that would be that the webb showed the rubber outside, was too slazy, not strong enough.

6. Q. Can you recall the woven elastic suspenders known as forty-eight?

A. Yes; I do remember the description of those goods.

7. Q. When did they first come into the market?

A. Somewhere about 1848 or 1849; I could not tell the year; it might have been as far back as 1847.

8. Q. Are there any goods like the forty-eights now on sale in the market?

422 A. I don't know of any.

9. How long is it since you have seen any forty-eights on sale in the market?

A. I don't remember seeing any since 1856.

10. Q. Describe the forty-eights as nearly as you can?

A. The webb was made of cotton, with elastic rubber inside; it was made of white and pink thread; the rubber was coarse strand; the filling was wove light, and where the filling did not cover it up, the rubber showed itself; in stretching the webb out, the rubber would show itself more than when it was closed up, and the rubber, when the suspender lay still, "crinkled" up, and the rubber would stick out.

11. Q. When the forty-eights were lying in the box, did they lie straight; and if not, how did they lie?

A. If they were tied down they would lie straight, except some of them being "crinkled"; and if they were not tied some of them would curl up.

12. Q. State whether or not in the elastic suspenders which were in the market before 1854 or 1855 the cotton warps covered the rubber threads tip and bottom?

(Objected to as leading.)

(Question withdrawn.)

13. Q. Look at complainant's Exhibit S., N. A. P., and state when you first saw such goods in the market?

A. There is not enough of it to tell. I find by examining it, it is full elastic goods; about 1855 or 1856.

14. Q. Look at defendants' Exhibit No. 3, R. E. S., and state when you first saw such goods on sale in the market?

A. The same time that I saw complainant's Exhibit D. D.

15. Q. State, if you please, how long you have been in the business of selling woven elastic fabrics?

A. 23 years; not my principal business, but sold them with other goods.

423 16. Q. Will you look at Exhibit No. 2, N. A. P. Examine, and state if you know whose manufacture it is, and by what designation it was known in the market.

A. That was known as No. 50, manufactured by the Russell Manufacturing Company.

17. Q. When and how long did the Russell Manufacturing Company manufacture and put these goods on the market, so far as you know?

A. 1850 to 1856.

Cross examined:

Cross 18. Q. State what has been your business from the time when you say you commenced the sale of woven elastic suspenders?

A. Dealing in fancy goods.

Cross 19. Q. What was the style of your firm in the year 1846?

A. My own name, Caleb Holt.

Cross 20. Q. Where?

A. In Willington, Conn.

Cross 21. How large an establishment were you the proprietor of at Willington, Conn.?

A. I used to have $3,000 to $4,000 in value in stock on hand, sometimes more, according to the season.

Cross 22. Q. How long were you engaged in that business in Willington, Conn.?

A. Six years.

Cross 23. Q. Did you do a wholesale business in that village?

A. That was not my business of doing a wholesale business in that town solely. I used to sell about a quarter of my goods at wholesale there, and the balance of my business I used to do by travelling and selling from my wagon to merchants in different towns. I also used to sell goods by samples in New York.

Cross 24. Q. To what parties in New York did you sell goods while you were at Willington, Conn.?

424 A. Peter W. Turner, 19 Maiden Lane, in the basement; Fuller Brothers, in the same place; James Mairs & Co, 177 Pearl street; W. S. Conant, about the same number, up stairs; I think Bridgeman

and Day, in the same block, I forget the number; Arnold & Southworth, 169 Pearl street, corner of Pine and Pearl; Halsey and Baldwin, in Pearl street, near the foot of Cedar; Spellman and Frazier, 83 Cedar street is where I last knew them—they were located at various places; John J. Hinchman & Co., either 51 or 53 Cedar street; Luther Williams, 84 William street; C. F. and L. Williams, 93 Maiden Lane; D. S. Arnold & Co., the last place I knew them under that firm was at 19 Courtlandt street. I am now counting between 1846 and 1852, about 6 years. I don't now remember any other parties that I now can locate or mention their names.

Cross 25. Q. Do you know where any of those parties whom you have mentioned now are? If so, please state.

A. I do; P. W. Turner lives at Hebron, Conn.; Southworth, I think, lives in Weathersfield, Conn.; Arnold, his partner, in Brooklyn; Spellman lives in Brooklyn, his place of business 370 Broadway; John J. Hinchman, 390 Broadway, N. Y.; D. S. Arnold is, I think, at 28 Warren st., N. Y.

Cross 26. Q. Did you, between the period from 1846 and 1852, sell woven elastic suspender-webbing to either of the parties last mentioned; and if so, which?

A. I so sold to Spellman and Frazier. Frazier is dead. To Arnold and Southworth.

Cross 27. Q. Describe the kind of suspender-webbing you sold to Spellman and Frazier during those years as minutely as you know how.

A. Well, they were suspenders made of webb, as I described as being No. 48 and No. 50.

Cross 28. Q. From whom did you purchase these suspenders?

A. The Russell Manufacturing Company.

Cross 29. Q. From any one else?

A. I purchased them from merchants in Middletown—Smith and Griswold, William A. Camp & Co. I don't remember any other parties.

425 Cross 30. Q. Describe the kind of suspender-webbing which you sold in the year 1846.

A. Heavy web*b*, with elastic rubber outside of it.

Cross 31. Q. Have you ever been a weaver?

A. No; I never have.

Cross 32. Q. Is the knowledge which you have of suspender-webbing derived solely from your experience in the sale of such goods?

A. It is.

Cross 33. Q. Have you described as minutely as you can the kind of suspender-webbing you sold in the year 1846?

A. Except as to the color of the yarn.

Cross 34. Q. Are you familiar with any other kind of suspender-webbing than that which you say was known as Nos. 48 *and* 50 between 1846 and 1852?

A. I know of other kinds of suspender-webbing.

Cross 35. Q. Name them.

A. I know a kind No. 64. That kind was similar to No. 50. I don't recollect any other numbers particularly.

Cross 36. Q. What was the difference between Nos. 50 and 64?

A. 64 was heavier web*b*, and different ends on the suspenders.

Cross 37. Q. Is that all the difference?

A. That is all the difference that I know of, except the price.

Cross 38. Q. Describe the webbing known as No. 50, and state from whom you procured it between 1846 and 1852.

A. It was made of cotton yarn, and was wove with rubber inside and was elastic. It was of various colors, mostly red, white, and blue. I bought it of the Russell Manufacturing Company, William A. Camp & Co., and Smith & Griswold, Middletown, Conn.

Cross 39. Q. Why did you leave Willington, Conn.?

A. So as to change the location of my business.

Cross 40. Q. What was the object of such change?

A. So that I could get into a better section of the country, with the intention of making more money.

426 Cross 41. Q. How did you dispose of your business in Willington?

A. I moved my goods away, and left my bills to be collected by other parties.

Cross 42. Q. Where did you then go?

A. Batavia, New York.

Cross 43. Q. Did you carry on in Batavia as large a business as you had in Willington?

(Objected to as immaterial.)

A. Well, I could not say exactly whether I did or not.

Cross 44. Q. How long were you in business in Batavia?

A. Until November, 1854.

Cross 45. Q. When did you go there?

A. In the fall of 1852.

Cross 46. Q. What was the nature of your business while there?

A. Fancy-goods business.

Cross 47. Q. Did you still travel with your wagon?

A. Yes; I did.

Cross 48. Q. What kind of goods did you sell while you were in business in Batavia?

A. Fancy goods.

Cross 49. Q. Did you sell woven elastic goods, and if so, what kinds? Name them specifically.

A. I did; I sold one kind known as No. 64 of the Russell Manufacturing Co.'s make, No. 48, No. 50, several other numbers, varying in price from $1.25 to $4 a dozen.

Cross 50. Q. State those numbers, if you can.

A. I cannot tell exactly.

Cross 51. Q. How nearly can you tell?

A. I could not tell you.

Cross 52. Q. To what parties did you sell woven elastic goods while you were in business in Batavia? Name them, and give their places of business at that time.

A. Clark and Frost, of Batavia; Hall and Holden, same place;
427 Abner Smith; Myles H. Bierce, and several other parties whose names I can't give. These were all of that town. I sold suspenders in adjoining counties and towns in this State, also in Ohio and Pennsylvania. When I was out of town I was travelling with my wagon.

Cross 53. Q. From whom did you purchase these goods which you sold while you were in business in Batavia from the fall of 1852 to November, 1854?

A. The Russell Manufacturing Company; also merchants in New York.

Cross 54. Q. Give the names of these New York merchants.

A. Perego and Bulkley was one; I bought suspenders of Curtiss, Storrs & Co.; from two parties in Buffalo, N. Y.: S. O. Barnum was one, Henry Cone was another. I don't remember any others that I could name.

Cross 55. Q. How large a portion of your time was occupied in travelling about the country by you with your wagon during these years, from 1846 to 1854?

A. About three quarters.

Cross 56. Q. Why did you leave Batavia?

A. I left Batavia to come to New York to go into business here.

Cross 57. Q. Did you continue the same business in the city of New York; and, if so, what kinds of woven elastic goods did you sell?

A. I did; I sold goods that were made by the Russell Manufacturing Company, Willeston, Knight & Co. I don't recollect of any other names.

Cross 58. Q. Describe the kind of woven fabric which you first bought or sold in New York.

A. I sold goods known as No. 48 and No. 50, sixty-fours, No. 85; a good many other numbers that I could not remember what they were; I think there was a No. 254 and 257.

Cross 59. Q. What was the difference between No. 85 and No. 64?

A. I believe that No. 85 was not an elastic suspender; No. 254 and 257, I think, were very elastic suspenders.

428 Cross 60. Q. Did you continue to sell these numbers in the city of New York while in business here?

A. Yes.

Cross 61. Q. How long was it before you left New York to go in business elsewhere?

A. I have never left New York to go in business any other place since I came here.

Cross 62. Q. Are the kinds of woven elastic goods which you have named the only ones you remember having sold while in business in New York?

A. No, they are not.

Cross 63. Q. What others do you remember having sold while in business there up to 1860?

A. I sold other numbers sold by Willeston, Knight & *and* Co., the Russell Manufacturing Company, and English and French made suspenders.

Cross 64. Q. When, since 1846, did you first sell English-made suspenders?

A. From 1854 to the present time.

Cross 65. Q. Describe the kind of English-made suspender which you sold in 1854.

A. Cotton web*b*, with rubber inside, wove in.

Cross 66. Q. Was there nothing but rubber inside?

A. Cotton and rubber mixed together.

Cross 67. Q. Have you answered cross-question 65 fully?

A. Except there being leather on the ends.

Cross 68. Q. Describe how the cotton and rubber in these English-made suspenders were mixed together.

A. The rubber was woven inside with the cotton yarn.

Cross 69. Q. Do you mean that they were side by side, or how otherwise?

A. There were threads of yarn that were with the rubber and across the rubber.

Cross 70. Q. Is not that true of all suspender webbing in which there are rubber threads?

A. I believe it is.

Cross 71. Q. Then you know of no difference between the English-made suspenders and those you say you procured from the Russell Manufacturing Co.?

428¼ A. There is a difference in the appearance of the goods; some of the Russell Manufacturing Co.'s goods have more rubber in them.

Cross 72. Q. Did you continue to travel with your wagon after you came to New York?

A. I did not.

Cross 73. Q. Where were you first located?

A. No. 4 Dey street.

Cross 74. Q. Were you alone, or had you a partner?

A. I was with William H. Lyon & Co.

Cross 75. Q. In what capacity?

A. Buying and selling goods.

Cross 76. Q. Were you their clerk?

A. Yes.

Cross 77. Q. Who was the president of the Russell Manufacturing Co. when you bought goods of them, as you say, in Willington, Conn.?

A. I could not tell you.

Cross 78. Q. About how many inhabitants had Willington, Conn., while you were in business there?

(Objected to as immaterial.)

A. I could not tell you.

Cross 79. Q. Will you please give it as near as you can?

A. From 800 to 1,200.

Cross 80. Q. Was Batavia as large as Willington?

(Objected to as immaterial.)

A. Yes, it was.

Cross 81. Q. How much larger?

(Same objection.)

A. It was about three times as large.

Redirect:

428½ 82. Q. Were Smith and Griswold and William H. Camp & Co., of Middletown, Conn., weavers or manufacturers of webbing?

A. They were not.

83. Q. What were they?

A. Merchants.

84. Q. Where did they get the webbing you bought of them?

A. They gave me an order on the Russell Manufacturing Co. for the goods.

85. Q. When did Willeston and Knight go into business as manufacturers of suspenders, if you know?

A. About 1850; it may have been later.

86. Q. Please look at Complainant's Exhibit No. 2, N. A. P., examiner, and Complainant's Exhibit T, N. A. P., examiner, and say, as far as you know, whether or not Exhibit No. 2 or Exhibit T was similar to the English imported goods in the construction of the webbing.

(Objected to, as the witness has already said there was no other difference than in appearance and quantity of rubber employed.

Counsel for defendant objects to an instruction by complainant that he refers to appearance.

Complainant states that he never gave any instructions, and counsel

for the defendant had no right to put any such thing on the record about the complainant.)

A. No. 2 appears to be the same construction, except of its being ribbed. the English goods being smoother—smooth-faced.

87. Q. Please look at Complainant's Exhibit No. 2, and say if the English goods were finer or coarser than this exhibit.

(Same objection as above.)

429 A. Finer in yarn and finer in rubber.

88 Q. The English imported goods being finer in yarn and finer in rubber, would it have a tendency to make the ribbing finer or coarser in appearance in the webbing?

(Objected to as leading.)

A. It would make it finer.

CALEB HOLT.

Sworn to before me this 4th day of November, 1869.

KENNETH G. WHITE,
Examiner, &c.

Adjourned to Nov. 9, 1869, at 10 a. m.

NOVEMBER 9TH, 1869—10 A. M.

Present, counsel as before.

C. BELDEN HALL, being called as a witness for the plaintiff, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence and business?

A. Fifty-six years old; 459 West 22d street; New York City; real estate and stocks.

2. Q. Were you a member of the firm of Kirkland, Mansfield and Hall, of Philadelphia?

A. I was.

3. Q. Was Morris Raleigh ever in the employ of said firm; and if yea, when and in what capacity?

A. He was a porter.

4. Q. When did he leave their employ?

A. He was in their employ during the existence of the firm, which I think was in forty-seven, which was then changed to Mansfield, Hall & Stone, and he continued with them until April, 1849.

430 5. Q. During this time did his duties as porter occupy all his time?

A. He was hired for that purpose, but sold some goods for us at the same time.

6. Q. When did he come into the service of Kirkland, Mansfield & Hall?

A. I should say 1844.

7. Q. What did he do previous to that, if you know?

A. I do not know; he only came over from Ireland about that time—the year previous, I think.

8. Q. What did he do after he left Mansfield, Hall & Stone?

A. He opened a store, No. 25 Church Alley, one floor merely—the first.

9. Q. What did he sell in this store?

A. Suspenders was his sale, and Yankee notions generally; he had consigned him an agency of patent thread from Ireland.

10. Q. How long did he continue in this business?

A. Well, I should say perhaps eighteen months.

11. Q. Between "forty-four and forty-seven" what were his duties?
A. As porter, and performed duties already mentioned.
12. Q. Between the years "'44 and '49," while he was with you, did he buy and sell goods on his own account?
A. Not that I am aware of.
13. Q. While he was with you, was all his time required in your business?
A. Yes, sir; I paid him for all his time.
14. Q. Do you remember the suspender fabric known in the market as No. 48?
A. Yes, sir.
15. Q. Please describe it.
A. It was about an inch and a half in width; the web was very thin; it contained about, I should say, seven strands, seven or eight strands of rubber; being very thin, you could see through it by holding it
431 up to the light and stretching it. When contracted in its natural state the web became very much cockled.
16. Q. How elastic *with* it?
A. I think it would extend about one-third; would stretch, I mean.
17. Q. When did you first deal in 48's?
A. The only positive evidence I can swear to from my books is in forty-seven (1847).
18. Q. How long did you continue to deal in them?
A. I remark that these sales I speak of now are of Mansfield, Hall & Stone; the previous firm of Kirkland, Mansfield & Hall also sold them, I think about two years previous.
19. Q. Do you remember the suspender fabrics known in the market as No. 50?
A. I do.
20. Q. Did you ever deal in that fabric?
A. We did, largely, too.
21. Q. Look at Complainant's Exhibit No. 2, A. A. P., Ex'r, and state whether or not that is No. 50.
A. I should say it was, most certainly.
22. Q. When did you first deal in these goods?
A. I should think in forty-four.
23. Q. Were they called No. 50 at that time?
A. Yes, sir.
24. Q. How long did you continue to deal in these goods?
A. Until April, 1849.
25. Q. Will you produce and annex to your deposition extracts from the books of Mansfield, Hall & Stone, showing the purchases made by you from the Russell Manufacturing Co. of 48's and 50's?
(Witness produces, in answer to this question, Complainant's Exhibit 20, R. E. S.)
26. Q. Was this statement drawn off by you from the books of Mansfield, Hall & Stone?
A. It was.

432 Cross-examination:

Cross 27. Q. When did the firm of Mansfield, Hall & Stone commence business?
A. I think it was July of 1847.
Cross 28. Q. What was the nature of their business?
A. It was styled a domestic commission dry goods business.
Cross 29. Q. Did your firm as early as July, 1847, sell suspenders—woven elastic suspenders?

A. They did.

Cross 30. Q. From whom did you procure them?

A. Principally from the Russell Manuf'g Co.

Cross 31. Q. From whom besides did you procure such suspenders?

A. S. Hotchkiss & Merriman Manuf'g Co., Horace H. Day.

Cross 32. Q. What is the number of the woven elastic suspenders which you first procured from the Russell Manuf'g Co.?

A. Well, I think Nos. 50 and 48 were among the first; numbers 22 and 23.

Cross 33. Q. Will you swear that you procured No. 22 or 23 in the year 1847 from this company?

A. Yes, sir.

Cross 34. Q. Do you remember procuring any other numbers of woven elastic suspenders of the Russell Manuf'g Co. during the year 1847?

A. They made a No. 29, and I think Nos. 64 and 65; the sales of those were very light.

Cross 35. Q. Describe, as minutely as you know how, a woven elastic suspender, which you say your firm sold in 1847, numbered 22?

A. That was a boy's suspender; I should think about an inch and a quarter in width; scarcely that—about an inch.

Cross 36. Q. Is that as complete a description as you can furnish of No. 22?

A. Yes, unless it is the web. The web was more like the style of 50's.

433 Cross 37. Q. What do you mean by style, in your last answer?

A. The manner in which the web is woven. I don't think I can answer any more minutely.

Cross 38. Q. Have you ever woven elastic goods yourself?

A. I have not.

Cross 39. Q. What was the color of No. 50?

A. They had a pink striped centre, with a pink border with a green strand between, I think—between the centre and the edge.

Cross 40. Were Nos. 50 made of no other color than these you have mentioned?

A. I never saw any other.

Cross 41. Describe, as minutely as you know how, the woven elastic suspenders procured by your firm of the Russell Manuf'g Co., as you say numbered 23, and what was the difference between it and 22.

A. The web was similar to 22; it was intended for men's wear, with a leather extension on the end.

Cross 42. State what you mean, when you say in your last answer, "the web was similar to 22."

A. The style of manufacture of it, the shading; it was, I think, the same web.

Cross 43. What was the nature of the web?

A. As I said in regard to 22, it was the same as No. 50.

Cross 44. What was the nature of the web of No. 50?

A. I don't know that I can describe it any more than that it was a heavy suspender and the gum well covered.

Cross 45. Did you not say that when No. 50 was stretched the gum was visible?

A. No, sir.

Cross 46. What was the character of the woven elastic fabric of which you have spoken, known as 64?

A. I think the web was the same kind of web as 50's, but a lighter suspender, shaded differently, differently from No. 50.

Cross 47. When did they first appear in the market, as far as you know?

434 A. I think in about 1847.

Cross 48. What kind of rubber was used in the manufacture of suspenders you have called 50?

A. They called it common gum; it was in strands.

Cross 49. Is not the rubber which is used in suspenders at the present day in strands?

A. It is.

Cross 50. What is the difference in external appearance of the two kinds you have mentioned?

A. Well, the others were called the Goodyear's patent.

Cross 51. Question repeated.

A. Well, the common gum has a dark appearance; the Goodyear has a white or nearly so; the Goodyear is the later.

Cross 52. When did the Goodyear rubber first appear in the market in suspenders, so far as you know?

A. Well, we sold for Horace H. Day, at the same time that we sold for the Russell Manuf'g Co.

Cross 53. Did you sell suspenders for Horace H. Day as early as you did for the Russell Co.?

A. I think we did, sir.

Cross 54. And these suspenders contained the gum made under the Goodyear patent, did they?

(Objected to as immaterial, as new matter, and because it doesn't appear witness is acquainted with the Goodyear patent.)

A. Yes, sir; of what is claimed to be his patent.

Cross 55. To whom did you, during the year 1847, sell No. 50 suspenders?

A. I will name over a few houses, but we sold to the whole trade:

Market street, Philadelphia: Williamson, Burroughs & Clark; Burnett, Withers & Co.; Heiskill & Haskins.

Third street: Eckel, Raiguel & Co.; Jos. S. Madeira & Co.; Ja's McClintock & Co.

435 Fourth street: Schaffner, Tiegler & Co.; E. S. Burnett; Lind Bro.

Strawberry street: George Strong, Armour Young.

Cross 56. Did you gain these names from your books or do you remember them?

A. From the books.

Cross 57. Do you know where any of these parties are now?

A. Well, there are many of them living, I think the majority of them; others, we hope, are gone to a better place.

Cross 58. Please be more definite in your answer to the last question.

A. A. S. Burnett is, I think, still in business in Philadelphia, and Armour Young and J. S. Maderia; I think Schaffner & Tiegler are still in business there, but I have not been in business with any of those parties for the last twenty years.

Cross 59. Did you sell any of those 50's in New York in 1847?

A. No, sir.

Cross 60. Have you given as accurate a description of the web of Nos. 50, 22, 23, and 64 as you are able?

A. I have.

Cross 61. What do you mean in your direct examination by the word cockle?

A. It was a word used to designate an uneven surface, like "crinkled."

Cross 62. Was no 50 crinkled?

A. No, sir.

Cross 63. What was the cause of this crinkling?

A. From the thin quality of the web.

Cross 64. Of what material was the web No. 50 made?

A. Cotton

Cross 65. Was it entirely, always of cotton?

A. All of cotton except the rubber.

Cross 66. What kind of suspenders did you procure of the Hotchkiss & Merriman Manufacturing Co. in 1847?

A. Well, we had so few from that concern that I don't know if we had any in that year.

436 Cross 67. Did you have any woven elastic suspenders from the Hotchkiss & Merriman Manufacturing Co. in the year 1848? If so, give their numbers and describe them.

A. I can't give their numbers, but they were similar in style of web to 22, 23, and 50.

Cross 68. Your books will show, will they not, what numbers you procured of the Hotchkiss & Merriman Manufacturing Co. in the year 1848?

A. I can't say whether they will or not; our invoice books are not in my possession.

Cross 69. Please explain how you are enabled to say what numbers you received from the Russell Manufacturing Co. and cannot say what numbers you received from the Hotchkiss and Merriman Manufacturing Co.

A. Well, our books show the Russell Manufacturing Co.; we sold a hundred doz. of them to one of the other.

Cross 70. Why do not your books contain a record of the goods received from the Hotchkiss & Merriman Manufacturing Co.?

A. I don't say that they will not, but I can't swear that they do.

Cross 71. Will you examine your books and ascertain from them whether you received goods from the Hotchkiss and Merriman Manufacturing Co., and what numbers they were known by, and deliver the same in written form to the commissioner to be annexed to this your deposition?

A. In the present state of my books I could not swear as to the numbers.

Cross. 72. Is this all the answer you have to make to the last question?

A. Yes.

Redirect:

73. Q. Will you describe fabric No. 29 mentioned in your answer to the 34th cross-interrogatory?

A. I cannot describe it with any accuracy.

74. Q. Was it more like No. 48 or more like No. 50?

437 A. My impression is it was more like 48; No. 26 was similar.

75. Q. Did you ever know any woven elastic suspender made of vulcanized rubber, while you were in the business?

A. I did not.

C. BELDEN HALL.

Subscribed and sworn to before me this 9th day of Nov., 1869.

JOHN A. SHIELDS,
Exam., &c.

SUSPENDERS—RUSSELL & CO.

Sales by Mansfield, Hall & Stone.

1847.	No. 48.		No. 50.
October,	50 doz.		20 doz.
December,	12 "		
1848.		1848.	
January,	118 "	January,	34 "
February,	113 "	February,	56 "
March,	72 "	March,	10 "
April,	140 "	April,	38 "
May,	102 "	May,	82 "
June,	216 "	June,	174 "
July,	370 "	July,	282 "
August,	128 "	August,	108 "
Sept.,	160 "	Sept.,	14 "
October,	152 "	October,	194 "
November,	62 "	November,	14 "
December,	38 "	December,	32 "
1849.		1849.	
January,	140 "	January,	48 "
February,	88 "	February,	38 "
March,	242 "	March,	42 "
April,	15 "	April,	30 "

Complainant's Exhibit 20, R. E. S.

438 ROBERT DIX, being called as a witness for the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. Robert Dix; my age is 39; 66 Taylor street, Brooklyn, E. D.; by occupation a shoe manufacturer.

2. Q. Have you had any experience in manufacturing Congress boots with elastic gores; and if yea, how much?

A. Well, probably for the last ten years.

3. Q. Will you look at complainant's exhibit marked 1, N. A. P., ex'r, 2, N. A. P., ex'r, 3, N. A. P., ex'r, and 4, N. A. P., ex'r, and state whether such webbing is adapted or fit to be used for gores for Congress boots?

A. I should say neither of these would answer; I have never seen anything of that kind used.

Cross-examined:

Cross 4. Why is not Complainant's Exhibit 1, N. A. P., ex'r, adapted or fit to be used for gores for Congress boots, in your opinion?

A. Because I don't consider that it is elastic enough—the colors are not right, and it is not wide enough.

Cross 5. Do you make any different objections to Complainant's Exhibits Nos. 1, 2, 3, and, 4, ex'r?

A. No, sir.

Cross 6. Have you no other reason why either or any of these exhibits 1, 2, 3, and 4 are not adapted or fit to be used for gores for Congress boots?

A. I can't see but they are all entirely unfit for the use of Congress boots.

Cross 7. Question repeated.
A. No, sir.

ROBERT DIX.

Subscribed and sworn to before me this 9th day of Nov., 1869.
JOHN A. SHIELDS,
Examiner, &c.

439 WOLF NEWMAN, being called as a witness for the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?
A. Wolf Newman; my age is 48; residence 306 Bleecker street; am a manufacturer of shoes.
2. Q. Have you had any experience in the manufacture of Congress boots with elastic gores; if yea, how long have you had such experience?
A. Twenty years.
3. Q. Will you look at complainant's Exhibits 1, N. A. P., Ex'r, 2, N. A. P., Ex'r, 3, N. A. P., Ex'r, and 4, N. A. P., Ex'r, and state whether fabrics, like any ot such exhibits, are fit or suitable to be used for gores for Congress boots?
A. They are not.

Cross-examined:

Cross 4. Why not?
A. Because they have neither width, elasticity, nor color enough.
Cross 5. How much more color would complainant's Exhibit 4, N. A. P., require to make it suitable for gores for Congress boots?
A. It would require to have but one single color, either black or brown.

WOLF NEWMAN.

Subscribed and sworn to before me, this 9th day of Nov., 1869.
JOHN A. SHIELDS,
Examiner, &c.

CORNELIUS MORROW, being called as a witness for the complainant, and being duly sworn, deposes and says as follows:

440 1. Q. What is your name, age, residence, and occupation?
A. Cornelius Morrow; I am 37 years old; a manufacturer and jobber in boots and shoes; 156 Deane street, Brooklyn.
2. Q. Have you had any experience in the manufacture of Congress boots with elastic goring? and if yea, state how long you have had such experience.
A. I have had some these last fifteen years.
3. Q. Will you look at complainant's Exhibits 1, 2, 3, 4, N. A. P., and state whether or not in your judgment fabrics like such exhibits are fit to be used for elastic gorings?
A. I should say not.

Cross-examined:

Cross 4. Please state all the grounds on which you base your judgment.
A. They are not goring at all; they ain't wide enough; there is not enough elasticity to it, and they ain't the right color.

C. MORROW.

Subscribed and sworn to before me, this 9th day of Nov., 1869.
JOHN A. SHIELDS,
Examiner, &c.

JAMES M. BURT, being called as a witness for complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. James M. Burt; I reside at Orange, N. J., and do business at 23 Park Place, N. Y.; aged 46; a manufacturer of boots and shoes.

441 2. Q. Have you had any experience in the manufacture of Congress boots with elastic gores? and, if yea, state what experience you have had.

A. Yes; I have cut about fifty yards a week for the last ten years.

3. Q. Will you look at complainant's Exhibits, marked 1, 2, 3, and 4, N. A. P., Ex'r, and state whether any of them are fit to be used for the gores for Congress boots?

A. No; I shouldn't think any of them were good without a loss; they might be used, but not without a loss.

4. Q. In what respect are they unfit for that use?

A. On account of the width, color, and elasticity.

5. Q. Have you got any other reason?

A. No.

JA'S M. BURT.

Subscribed and sworn to before me, Nov. 9, 1869.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Nov. 10, 1869, at 10 a. m.

NOVEMBER 10, 1869—10 a. m.

Present, W. C. Witter, esq., of counsel for respondent, and Cha's M. Keller, esq., of counsel for complainant.

Adjourned to November 11, 1869, at 10 a. m.

NOVEMBER 11, 1869—10 a. m.

Present, Charles M. Keller, esq., of counsel for complainant, and W. C. Witter, esq., of counsel for defendants.

412 Counsel for defendants says that pursuant to adjournment of November 9th, 1869, he was present on the 10th of November, 1869, and remained until 11 o'clock, and that pursuant to adjournment of November 10th he was present on November 11th, and remained until twenty-five minutes of 11; that no witnesses were present on either occasion, and the counsel for defendants objects to any testimony being taken without a new notice for the same.

Adjourned till further notice.

NOVEMBER 11, 1869—11 a. m.

Present, counsel for the respective parties.

WILLIAM E. HENNESSY, being called as a witness for the plaintiff, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, occupation, and residence?

A. William E. Hennessy; my age is about forty-three years; am a merchant, and reside at 202 West 24th street.

2. Q. Have you ever been in the business of selling suspenders; and if yea, how long—when did you begin and how long did you continue it?

A. Well, I don't know whether it was in forty-two or forty-three, in 1842 or 1843, in Philadelphia and New York both; I suppose I have

been more or less selling suspenders all the time since; I don't believe there has been a year that I have not sold suspenders, either foreign or domestic.

3. Q. What was the name of your firm?

A. The firm I commenced with as a clerk at that time was Holmes & Hubbard, and afterwards was with F. W. King & Co.

443 4. Q. Will you look at complainant's Exhibit No. 2, N. A. P., Ex'r, and state whose style of goods it was, and when it was on sale in the market?

A. That I can't do, because Hotchkiss and Merriman made a similar style to this; it was on sale previous to 1846.

5. Q. State whether or not that style of goods was the first woven elastic suspender in the market?

A. I don't think it was; suspenders were made before these were made with gum in.

6. Q. State whether or not this style of goods was the first woven elastic suspender put in the market by Hotchkiss and Merriman.

A. This was the first I saw of this style—this pattern of goods made by Hotchkiss and Merriman; they all made suspenders.

7. Q. What do you mean by pattern of goods?

A. Well, that peculiar shading there; the particular style of goods that were made that was known by a number at that time; I have forgotten what the number was.

8. Q. Will you look at complainant's Exhibit No. 4, N. A. P., Ex'r, and state whose style of goods it was, and when such goods were on the market?

A. I don't know whose style this was; there was a similar style to this on market at that time; I should think it was about 1846.

9. Q. By what name were they known in the market?

A. Well, some called them the red, white, and blue.

(Counsel for complainant shows the witness Exhibits marked 4, 5, 6, and 10, J. G., Ex'r, and complainant's Exhibits 1, 2, 3, and 4, N. A. P., Ex'r.)

10. Q. Please state whether you recognize any of these exhibits first shown you as being like the goods known in the market as No. 48, woven gum suspenders, prior to 1850?

444 (Objected to, as it does not appear that the witness knew of any goods as No. 48.)

A. I do not recognize any of them as No. 48, nor do I recollect what No. 48 was.

11. Q. Would you recognize No. 48 if you should see it?

A. Well, I have no recollection of what No. 48 was; every suspender company had their own numbers.

Cross-examination waived.

WM E. HENNESSEY.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner in Equity.

SAMUEL D. GORMAN, being called as a witness for the complainant, and being duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. Samuel D. Gorman; my age is about forty; residence 155 Madison avenue; occupation, importer and dealer in shoe manufacturers' goods.

2. Please look at complainant's Exhibits 1, 2, 3, and 4, N. A. P., Ex'r, and complainant's Exhibits marked J. G., jr., Nos. 4, 5, 6, and 10, and say if they are a fit article for elastic gores for Congress boots?

A. These look like suspender stock, and in their present state are unfit for Congress shoes.

3. Q. Would they be fit and proper for Congress shoes in any other state?

A. If they were made of proper material and width, and sufficiently elastic, I suppose they would.

4. What is the name of your firm?

445 A. Samuel D. Gorman.

5. Q. You use elastic goring, do you not?

A. Yes, in the manufacture of our boots, to a very small extent—that is, I keep a retail store as well as a wholesale.

6. Q. Do you pay a license fee to M'r Smith, or do you use such goring only as bears his stamp?

A. I do not; we neither pay license fee nor use goods which bear his stamp; we use only imported stock that bears no stamp.

7. Q. Are you or your house party to the combination to resist M'r Smith's patent?

A. I have not contributed any means for any such purpose.

8. Q. Have you not, with others, agreed to contribute to resist M'r Smith's patent?

A. I think at one time, some six or eight months ago, a subscription-list was being handed around, and I signed my name for a very small share of the average expenses; the smallest of any that were put down.

9. Q. Wasn't it a half share?

A. I really could not say whether it was a half or a quarter share; my impression is it was a quarter. Dealing very little in the fabric, we did not feel called upon to contribute largely.

Cross examination:

Cross 10. What made you sign your name for any contribution?

A. Well, I didn't want to run counter to the wishes of the trade in my neighborhood, although personally I had no interest in the matter, as I would just as lieve give up selling the fabric, elastic fabric, our trade in it is so small.

Cross 11. Has all your sale of elastic fabric been of imported make?

A. Yes, sir; as far as I know.

Cross 12. Did M'r Smith, or any agent of his, ever try to induce

446 you to take a license, or ever show you a patent for elastic goods, or have any conversation whatever on the subject of elastic fabrics?

A. Not to my knowledge; I am not aware that he did.

Redirect by the complainant:

13. Q. Did you ever receive, by post or otherwise, any circulars from me cautioning you not to infringe on my patent?

A. There is a faint impression on my mind that I saw such a circular on my desk; how it come there I don't know.

14. Q. Did you ever receive circulars purporting to come from the Glendale Elastic Fabrics Company?

A. I have no recollection of receiving such.

15. Q. Did you ever see such circulars about in the market among the merchants and the trade?

A. I think not.

16. Q. Who called upon you to solicit you to take an half share, or

any part of a shoe, and asked you to join in the opposition to my patent?

A. I was not personally acquainted with the individual; he was a stranger, and came in with one of my neighbors, Mr Weller, of the firm of Weller & Miller.

SAM'L D. GORMAN.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner in Equity.

NEIL MCCALLUM, being called as a witness for the plaintiff, and being duly sworn, deposes as follows:

1. Q. Have you already testified as a witness in this cause?

A. Yes, sir.

447 (Counsel for complainant shows the witness complainant's Exhibits 4, 5, 6, and 10, J. G., j'r, and complainant's Exhibits 1, 2, 3, and 4, N. A. P., Ex'r.)

2. Q. Are you a dealer in elastic gores, and how long have you been such a dealer?

A. Yes, sir; from four to five years; five years.

3. Q. Will you look at the exhibits first shown you, and state whether the fabrics are fit to be used as elastic gores for boots and shoes?

A. I should say no; in my opinion they would not be marketable.

Cross-examined:

Cross 4. What reasons can you give why you should say no?

A. The fabric is too coarse, to' heavy an edging; that is all the objection I should have to it; it would be unsalable for boots and shoes.

Cross 5. Is it wide enough?

A. No, it is not wide enough; in answering my previous question I did not take into consideration the width of it; it is nonsense to think of this for boots and shoes.

Cross 6. What can you say as to color?

A. It will not answer.

Cross 7. Then if the fabric represented by these exhibits were fine enough, had an edging light enough, was wide enough, and of the right color, would you not consider it fit for such gores?

A. I could only answer that with reference to my own trade; it would not be suitable for my trade: I don't think I can understand the question.

Cross 8. What would you do with the fabric represented by these exhibits in order to make it salable to your trade for elastic gores for boots and shoes, and state everything you would do?

448 A. In the first place the rubber would have to be changed—would have to be black rubber, and, in my opinion, much better quality; the sample of rubber which I have just taken from complainant's Exhibit, J. G., j'r, No. 5, is worthless; that is all that is necessary to make the rubber suitable; I would make the color black, the fabric much finer, make it of silk and cotton, and also of all silk, the weaving to be twice as firm, a great deal finer, in my opinion; make it wider, much wider, make it four and a half, five, five and a half, and six inches; the complainant's Exhibit, J. G., j'r, No. 6, for the shoe trade, is worthless; would have to have a finer edge—I refer to the edge. I have nothing further to say.

Redirect:

9. Q. Are any of these exhibits sufficiently elastic to be marketable for shoe gores?

A. No, sir.

NEIL McCALLUM.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner, &c.

GEORGE SILVER, being called as a witness for the complainant, and being duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. George Silver; aged 37; residence 402 W. 14th street; occupation, shoe manufacturer.

2. Q. How long have you been in that business?

A. Since October, 1857—12 years, I think.

449 (Counsel for complainant shows the witness complainant's Exhibits 4, 5, 6, and 10, J. G., j'r, and complainant's Exhibits 1, 2, 3, and 4, N. A. P., Ex'r.)

3. Q. State whether fabrics like these exhibits would be marketable for use as shoe gores?

A. No.

Cross-examined:

Cross 4. Why not?

A. Not being a manufacturer of elastic goods I cannot tell.

Redirect:

5. Q. Are any of them elastic enough for shoe gores?

(Objected to as leading.)

A. No; let me explain my position; I may be perfectly qualified to state what is suitable without being able to state what would make it suitable.

GEO. SILVER.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner, &c.

MAHLON MULFORD, being recalled as a witness for the complainant, and having been duly sworn deposes as follows:

1. Q. Have you already testified in this case?

A. I have.

2. Q. What is your occupation?

A. Leather and shoe finding.

3. Q. Will you examine complainant's Exhibits Nos. 1, 2, 3, and 4, N. A. P., ex'r, and complainant's Exhibits Nos. 4, 5, 6, & 10, J. G., j'r, and state whether the fabrics are fit to be used as elastic gores for boots and shoes?

450 A. These are not at all fit for boots and shoes; we have never sold anything of the kind; I consider that these are not fit. We have never had any call for such material.

4. Q. State whether or not these Exhibits, or any of them, are sufficiently elastic to be marketable for goring for boots and shoes?

A. I think not. I should suppose they were elastic enough, but they

were not the kind of goods I ever sold. When I said "I think not" I misunderstood the question.

The right to cross-examine Mahlon Mulford, this witness, is reserved.

PATRICK DOWLING, being called as a witness for the complainant, and being duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. Patrick Dowling; my age is about twenty-eight or thirty; residence, 46 Hicks street, Brooklyn, and my occupation is a shoe manufacturer.

2. Q. Will you examine complainant's Exhibits Nos. 1, 2, 3, and 4, N. A. P., ex'r, and complainant's Exhibits Nos. 4, 5, 6, and 10, J. G., j'r, and state whether fabrics like these are fit to be used for elastic gores for boots and shoes?

A. They are not.

3. Q. State whether or not these Exhibits, or any of them, are sufficiently elastic to be marketable for goring for boots and shoes?

A. No, sir; they are not.

PATRICK DOWLING.

The right to cross-examine this witness is reserved.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned till November 20th, 1869, at 10.30 a. m.

451 NOVEMBER 20, 1869—10.30 a. m.

Present, all the parties as before.

JOHN D. UNDERHILL, being called as a witness for complainant, and being duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. John D. Underhill. My age is thirty-two. My residence, 32 Commerce street, and I am at present superintendent of a shoe manufactory.

2. Q. How long have you been engaged in that occupation?

A. Four years and six months.

3. Q. Have you made or dealt in boots and shoes made with elastic gorings?

A. I have.

4. Q. Will you look at complainant's Exhibits 4, 5, 6, and 10, J. G., j'r, and complainant's Exhibits 1, 2, 3, & 4, N. A. P., ex'r, and state whether or not such fabrics are fit to be used for boots and shoe gorings?

A. I should say they were not.

Cross-examination:

Cross 5. Do I understand you to say that you have manufactured fabrics for elastic gorings for boots or shoes?

A. No, sir, I have not; I have used them.

Cross 6. In what particulars are the exhibits which you have examined unsuitable for elastic gores for boots and shoes?

A. First, there is not enough elasticity in them. I do not know that the width has anything to do with it, we don't use anything of this

width. The outside of ours is made of silk, the color is black. I would state that of all shoe goring the outside is black. I don't think of anything else.

J. D. UNDERHILL.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner, &c.

452 LEMUEL W. SERRELL, being called as a witness for the complainant, and being duly sworn deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. Lemuel W. Serrell; my age is forty; I reside in Brooklyn, and do business 119 and 121 Nassau street, and am a solicitor of patents.

2. Q. Did you act for M'r Smith when his application for the reissue of his letters patent, division B, 1867, was pending?

A. I did.

3. Q. Pending the proceedings on that application, were you referred by the office to a model of a truss having a piece of webbing attached?

A. I was.

4. Q. What did you do in consequence of that reference?

A. The examiner, in refusing the division B of M'r Smith's application for reissue, made several objections based upon publications, and also referred to a model which he produced, which model appeared to be a portion of a truss or abdominal supporter; the examiner on one occasion produced this model to us; it was composed of a flat or nearly flat pad, somewhere about the size and shape of a man's hand, and connected with this were straps of elastic webbing, some of the straps being narrow and others wide, the webbing was of a green color, interspersed with yellow, if I remember right, and the whole of this webbing was faded in color; upon the leather of the pad was an endorsement, purporting to show when the model had been received in the Patent Office. In discussion with the examiner, the question arose whether this model was genuine, and also whether the webbing contained the subject of M'r Smith's invention. In that discussion M'r Smith expressed himself that he did not believe any webbing corresponding with that on the model had been produced upon the market as early as the date upon the pad. We asked the examiner whether a piece of the webbing might be cut off; he said certainly, and either cut it off himself or directed where we should cut it off. In examination of that model, our suspi-

453 cions were aroused as to its genuine character, because we discovered that one end of the webbing had evidently been cut off for some time, the ends being frayed out, and on holding it up to the light, a row or rows of holes could be plainly observed through the webbing, showing conclusively that something had been stitched on and then cut off of that end of the said webbing; we made enquiries and instituted a search to see whether any portion of a model could be found corresponding to the holes of the stitching in the holes in this piece of webbing, but without success; during the search we visited the cases containing the patented models of trusses and supporters, and hunted them over one by one to see whether we could find any truss containing elastic webbing of a nature corresponding with that produced in the model referred to, and also to see whether the missing portion of this model could be recovered; we also visited the case of rejected models, with the same object in view, but could find nothing giving any light on the subject.

5. Q. Did you have any conversation with the machinist of the office in regard to the condition of the model; if so, what was it?

A. We did converse with M'r Jacobs, one of the machinists, relative to the condition of the model that I have referred to; we informed him that M'r Gregory, the examiner, had furnished us with a piece of the webbing, as mentioned by me; he seemed considerably excited, and expressed his disapproval of M'r Gregory's course in so doing; furthermore than that, his attention was called to the questionable character of the model, and he was desired to make a more careful search, to see if anything could be found throwing light upon the questions of doubt to which his attention was directed; he promised to do so between that time and the next morning; when we saw him the next morning he said he had made the examination with great care and could find nothing.

6. Q. Did you afterwards visit the office with regard to this model? and, if so, state how long afterwards, and what then occurred.

A. Upon conference with M'r Smith after the circumstances
454 narrated in my last two answers, we concluded to endeavor to find Enoch Thomas, the party who was reported to have been the party who filed the model referred to; after M'r Smith informed me he had found M'r Thomas, and showed me an affidavit from him denying a model of the character spoken of—denying that he had ever filed a model of the character spoken of. M'r Smith and myself visited Washington, and saw the examiner, M'r Gregory; in conversation, we informed him briefly that M'r Thomas had been found, and produced the affidavit sworn to by Thomas; the examiner, M'r Gregory, became very much excited; he expressed himself very strongly that the affidavit was a lie, but took the same, and said he would see what he could find out; we went, I think it was the next day, to see the examiner, and he then produced a model which corresponded with the drawings in Thomas' patent, and also with the statements which M'r Thomas had made in his affidavit, and he stated that he had found this model in the rejected cases, among the models of rejected cases, and admitted that the model first produced and spoken of in my answers to questions 4 and 5 was not a genuine one, but contended that it had been in the Patent Office from the time that was marked upon the leather of the pad; on the twenty-ninth of November, 1867, I addressed to the Patent Office two communications on the part of M'r Smith, certified copies of which I herewith hand to the examiner, and request that he will copy them upon the record; also, I addressed a letter to the Patent Office, dated January 22d, 1868, at which time the affidavit of Enoch Thomas had been obtained, and was handed into the Patent Office on or about January 23d, 1868, and the examiner is requested also to make a copy of the said letter on the record.

Cross-examination of M'r Serrell reserved by consent of complainant's counsel, who offers to produce him for cross-examination when requested.

LEMUEL W. SERRELL.

Subscribed and sworn to before me this 19th November, 1869.

R. E. STILWELL,
Examiner, &c.

455 **Circuit court of the United States, district of Massachusetts.**

WILLIAM SMITH
v.
GLENDALE ELASTIC FABRICS CO.

Testimony taken for final hearing under 67th rule of Supreme Court of United States, as amended, before Kenneth G. White, esq., an examiner of the circuit court of U. S. for southern district of New York, duly appointed and qualified under said rule.

NEW YORK, *Monday, Nov.* 29, 1869.

Present, Cha's F. Blake, esq., counsel for complainant; and Benj. Dean, esq., of counsel for defendant.

WILLIAM SMITH being called on his own behalf, and being duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. William Smith; my age is sixty-four the 7th day of last
456 September; my occupation is trying to maintain my rights against a ring opposed to them, which ring has committed many acts of fraud against me, which will appear upon the record; my residence is 252 Hudson street, New York City.

2. Q. State, if you please, what is your acquaintance with weaving, and how you acquired it.

A. My grandfather and my father were under the employ of John and Nathaniel Phillips, tape manufacturers, of Upper Tean, in the parish of Checkly, in the county of Stafford, England; after coming from school I was under my father in the same employ, studying the art of weaving and machinery of weaving and spinning; while there, I travelled to different parts of England, studying practical weaving, and different kinds of machinery of various branches; after that I entered into the employ of Messrs. Stevens & Frost, in the city of Derby, England, who were manufacturers of silk and Union gallows, shoe-laces, and of black ribbons, of what was known at that time in the trade as four-pennies, six-pennies, and eight-pennies, and they were also manufacturers of pasteboard, and so forth; I became what is called a commercial traveller for that house, visiting different cities, soliciting orders, and receiving funds; after that I went to the city of Macclesfield, Cheshire County, England; I there studied the art of weaving broad silks, silk dress goods, also designing practically; from there I went to Manchester, county of Lancaster, England; there I began to manufacture for myself; I manufactured dress trimmings and gimps, and upholsterers' trimmings, boot strapping, float lace, plushes, and velvets; the velvets that I manufactured were generally of Scotch plaid patterns for caps; I travelled to different cities for the sale of my own goods; I opened an agency in London, in Foster Lane, just opposite the great lamps on the back part of the post-office; I sold goods to most of the principal leading houses in London, and was generally conversant with that part of the trade which is known as small wares; I landed in this
country, I think it was the 11th day of May, 1845; during the
457 said summer I built some "powder looms," and put them to work in making cotton and linen fringes; made largely in parasol fringes, but did not manufacture any upholsterers' trimmings in this country; I continued so to do until about the cholera time in 1849; I think it was May or June. After my misfortunes come on me then I

removed my machinery up to Fifteenth street, between Eighth and Ninth avenues, and put one machine to work, or two machines, I think, making printers' bands, and from that time to this I have been acquainted with weaving, and building and fitting up said machines, fitting the necessary apparatus for driving the same by power, and consider myself an expert in weaving.

3. Q. Are you the patentee named in the patents set up in the bill of complaint in this cause?

A. I am.

4. Q. Are you acquainted with E. T. Sawyer, and when and where did you first make his acquaintance?

A. I am acquainted with him, and first made his acquaintance at the store of Faxon and Elms, in Boston; I think it was in the summer of 1867.

5. Q. What was his business at that time?

A. He represented himself to me as the agent and superintendent of the Glendale Vulcanite Rubber Co., having samples of elastic shoe goring, soliciting and taking orders for the same, telling me that they were manufacturing goods under my patent machinery and process, and that being from the commencement of their manufacturing at Glendale; the Glendale Vulcanite Rubber Co. was afterwards changed to the Glendale Elastic Fabrics Company, and, as I have been informed, the machinery remained in the same form and in the same place, and was not changed with the change of companies.

(Objected to as incompetent and not responsive.)

6. Q. Have you had conversations with M'r Sawyer in regard to the fabrics manufactured by these two companies; and, if so, how many, and what was said in each?

(Objected to as incompetent and immaterial.)

458 A. I cannot state how many conversations I have had with him, but to the best of my memory there have been five or six, and the substance of our conversations have been always the same, except in the last conversation; they all took place from about Christmas, '66, until the middle of August, 1868; the substance of the conversations, except the last one in August, 1868, and these former conversations all took place in the store of Faxon and Elms, and were as follows: "Why don't you bring a suit against us?" (meaning the Glendale Elastic Fabrics Company and the company prior to that, the Glendale Vulcanite Rubber Company); "We are making the goods under your claim, why don't you bring a suit and test the question," inviting me, at some of the interviews I had with him, down to the factory at Glendale, where I could see the machinery at work.

7. Q. Did you ever visit the factory of the defendants' company; and, if yea, whom did you see there, and what did you see there?

A. About one or two weeks before I visited the factory, I met E. T. Sawyer in the store of Faxon & Elms; he was more urgent at that time than at any other for me to visit the factory; I heard also from other parties that he has told them that he had invited me to visit the factories, and dared me to bring a suit against them, and that I durst not do it. I conferred with M'r Elms, and he said, why don't you go to M'r Lovering and get a letter of introduction to the factory; I demurred about going down, fearing that after the trouble and expense of my journey I should not be permitted to go in; I called upon M'r Lovering at Milk street, Boston, at his store, and told him the reason I had called upon him; he said he would give me a letter of introduction, which he

wrote and handed to me, giving me verbal directions what trains to take to connect at Springfield with trains to Glendale; he further said, "M'r Smith, I never thought you had any rights; how do you intend to charge a tariff? is it by each loom or so much per yard?" I answered, "So much per yard." I went right down, according to his verbal in-
459 structions, and I went to the office of the company, which is a little distance from the factory; I handed the letter to E. T. Sawyer; he read it, took me down to the factory; took me into, I think, two different rooms; introduced me to a young man of the name of Buckley, I think (I am certain he said so), who had the management of the looms and the fitting up of the weaving department. Us three fell into conversation about the affidavit of E. T. Sawyer and the samples sent, which were made by M'r Buckley, which said affidavit of E. T. Sawyer has been purloined from the files of the Patent Office; we spoke particularly about one sample that he had sent to the Patent Office along with the affidavit, where he had introduced in the sample the elastic cords on one heddle shaft, and the non-elastic fibrous warp on another heddle shaft, and woven and interlocked with the weft in the ordinary manner of plain weaving, which was evidently done to mislead the examiner in the Patent Office, as some new kind of fabric which they were making different to mine; the elastic cords being not in the centre of the fabric, and not covered by the weft, has caused such sample to decay, which I saw some ten days ago in Washington, and the elastic rubber cord becoming rotten had partially fallen out of it, while samples made under my process are as apparently perfect as when they were first filed in the Patent Office. We then proceeded down the room, and I saw several looms where they were making union shoe-goring, that is, silk on one side and cotton on the other, both shuttles passing through the web simultaneously together; I took particular notice of the manner in which the lay, or lathe, and shuttle-board were constructed; I saw that they were made permanent and a fixture; that they were not made to rise and fall, for one shuttle to pass through the shed at a time, but the plane of each shuttle was permanent, and made and constructed in exactly the same manner as my specification and drawings and claim in my patents, division A. In looking at the stationary warp in the aforesaid loom, I saw that they had the stationary warp in the centre of the moveable warp, whereas in the drawing
460 of my patent it is shown to be behind the moveable warp, but in practice I moved the stationary warp from behind to the centre and also to the front of the moveable warp, according to the character of the goods I was making at different times; the remaining part of the loom I do not claim under my patents, being varied in the trade, according to taste and opinion of different parties, and according to the character of goods manufactured.

8. Q. In the process of weaving, which you saw in the Glendale factory, how did the filling enclose the stationary warps?

A. It was covered (the stationary warp) by the weft thread only.

9. Q. State how the process of weaving which you saw at the Glendale factory differed from that invented by you and secured to you by your letters patent, if at all.

A. There was no difference in the process of the weaving, but the way it was fitted up showed a great want of knowledge of art in making the goods, which, if all the goods were made similar to what I saw them making at that time, I could distinguish those goods in the market from any other make or manufacture that I ever saw; as far as the machinery went of the looms, the machinery itself was, I consider, good.

(Objected to as incompetent and irresponsive.)

10. Q. State when and where you had your last conversation with M'r Sawyer, and what passed.

(Objected to by counsel for defendant.)

A. We left the factory, and returned to the office of the company; he showed me some round braided goods and some narrow elastic web, about as wide as what they use on pocket-books, similar to the sample which M'r Williams produced some days ago at M'r Gifford's office while giving his testimony; I told him that I made no claim on braided
461 goods, but I claimed the narrow webbing which was made according to my patent of division B; he then asked me if I would take ten thousand dollars for the patent; the answer I made that it would not pay for the cost of the present suit, and leave me minus a great many thousand dollars out of pocket, or words to that effect; it comes to my recollection now, through giving my evidence, that I saw him once afterwards at Faxon and Elms' store; he either said to me, or M'r Elms did, I cannot say which now, "He has got a claim on the fabric, and we must try to break it." On my return to New York I wrote a letter to M'r Joseph S. Lovering, Milk street, Boston, stating I had been down to the factory; saw the machinery, which I considered good, with the manner of fitting up the loom I considered not so. He wrote me a letter in reply, dated the 24th of August, 1868, stating he had received my communication, adding in a postscript, thanking me for my suggestions about the looms, saying he should see M'r Sawyer the morrow, and he would confer with him; I have mislaid that letter and could not lay my hand upon it as I came away, but I intend to put it in evidence.

(Counsel for complainant reserves the right to produce and annex to the witness's deposition the letter above mentioned.

Counsel for defendant objects to the above answer as incompetent and irresponsive.)

Cross-examined by Benj. Davis, esq., counsel for defendants:

Cross 11. In your answer to tenth interrogatory, you refer to a sample produced by M'r Williams; was it the sample of narrow black web, the narrowest piece produced by him, and annexed to his deposition as an exhibit?

A. I did refer to it as being somewhat similar in width and color and make.

Cross 12. Did you claim, in your conversation with M'r Sawyer, that web like that sample, of that character and make, was within your patent?

462 A. I claimed that the pattern or sample which M'r E. T. Sawyer showed to me was under my claim of division B, but whether the sample that M'r Williams put on as an exhibit was exactly similar I cannot say.

Cross 13. What did you mean by saying it was similar in your direct examination?

A. I said it was somewhat similar, similar in appearance; but I would not swear except I had both samples together to compare.

Cross 14. Do you mean to say that in your direct examination you really said it was somewhat similar, or similar in appearance?

A. As I recollect, I said it was somewhat similar in appearance, or similar, but being fifteen months ago since M'r Sawyer showed me that sample, and never since that time until M'r Williams produced this sample some days ago having handled or examined any fabric similar, I do not wish to state that they were exactly similar.

Cross 15. With respect to what feature of the fabric are you in doubt?

A. I feel no doubts about the general appearance of the fabrics, that they were somewhat similar; cannot precisely state that they were exactly similar.

Cross 16. In what respect do doubts exist in your mind as to their similarity?

A. I have no doubts about their similarity, as I have stated before, and don't hesitate to swear to that point; but the exact similarity between the two samples mentioned I cannot swear to.

Cross 17. When you say you cannot swear to their exact similarity, do you refer to the size of the piece of fabric, its width and material, or do you refer to the manner in which the fabric was woven and put together?

A. I do not refer to its width; its material I cannot state, nor its construction, except I have the two samples before me to compare.

Cross 18. Describe, as well as you can, the sample shown you by M'r Sawyer.

463 A. It was a narrow piece of black elastic webbing, to the best of my recollection, about half an inch wide. It was made with fine rubber strands, being tightly bound together, and the weft being tightly pressed upon the elastic strands by the interlocking warp and weft thread, and the weft passing partly around the elastic strands.

Cross 19. How many weft threads had it?

A. I cannot say; I never counted them.

Cross 20. With how many weft threads was it woven?

A. That I cannot say. In a general way a manufacturer puts one or two, or more, weft threads together, according to the coarseness or fineness of the threads or the character of the goods he is making.

Cross 21. With how many shuttles was it woven?

A. One.

Cross 22. Were there any weft threads used, except the weft thread contained in that one shuttle?

A. I do not recollect any.

Cross 23. How many threads of fibrous warp were between the rubber warps separating the rubber warp threads from each other?

A. I think there were four; but whether they were put in two threads in one heddle, and two other threads in another heddle, or the four threads was put in four heddles, I cannot now state.

Cross 24. Would that make any difference as to its being within your patent?

A. I do not think it would, if all the other characteristics of my patent were retained.

Cross 25. What was the selvage cord of such fabric, and how was it covered?

A. I cannot speak to a certainty at this distance of time about the selvage. I only looked at it momentarily in the sample book.

Cross 26. Do you mean to say that you are unable to tell the material of which the selvage cord was made?

A. I did not look at the sample so particularly as to be able to
464 swear now whether the selvage was round or not; I don't know as I looked at the selvage at all; I looked at the centre of the fabrics.

Cross 27. Is there any peculiarity in the selvages of goods made according to your patent?

A. Nothing peculiar, according to the goods that are made now; but at the time of my invention, my patent, I had never seen or knew of any such selvages being made to a fabric.

Cross 28. What was the peculiarity of your selvages that you had never before seen?

A. I introduced a fine piano wire, or its equivalent, in the outside edge of the fabric, to allow the elastic rubber cord freely to contract.

Cross 29. Was there any other peculiarity in the selvages of goods made according to your patent?

A. There was.

Cross 30. What is that peculiarity?

A. There was no interlocking warp to make what is known in the trade as a round selvage, nor was there any filled selvage attached to the outside of the fabric.

Cross 31. Did the selvages of goods made according to your patent differ in any other respect from other goods then made?

A. I do not know of any such selvage being made at the time of my invention; never heard of them nor saw them.

Cross 32. Did the selvages of goods made according to your patents differ from the selvages of other goods in any particular except the particulars just mentioned by you in this deposition?

A. I never noticed nor knew or saw any selvages similar to mine until I saw them produced in M'r Gifford's office in May last, in the direct testimony of the respondent. Furthermore, of the evidence of M'r Winslow, in Boston, who has been in the suspender business, buying and selling, for about twenty or twenty-two years; that he never saw goods with such selvages in the market the same as respond-
465 ent's Exhibit No. 8; his partner also, M'r Fosdick, swears that he has seen somewhat similar goods to respondents' Exhibit No. 8, in the body of the fabric, in 1855 or 1856, I forget which; but the selvages were made different.

Adjourned till November 30th, 1869, 10 a. m.

NEW YORK, *November 30th*, 1869—10 a. m.

Present, counsel as before.

The cross-examination having been read, the witness desires to correct his answer to cross-question 32, as follows:

I never saw such selvages in suspender webbing before I saw them in M'r Gifford's office, in respondents' Exhibit No. 8, but have seen them in imported shoe-goring and domestic make. In addition to answer of cross 32, I desire to state that M'r Cha's C. Nichols, who was a witness for the complainant, and had been a dealer and importer in suspender webbing from nearly its earliest date of introduction to this country, and who continues to be a dealer, testified, if my memory is correct, that he had never seen in the market the same as respondents' Exhibit No. 8, with such kind of selvages; also M'r Marshall Lewis, also a witness for complainant, who had been in the business, I think, some twenty-six years, also an auctioneer for the selling of such goods in large quantities, and who continues to deal in such goods to the present time, testified that he had not seen such goods, if I remember correctly, until a recent period.

The witness further desires to correct his answer to question 2 of direct examination, as follows:

I wish to omit "spinning" from my answer to the above question, as it was at a subsequent period that I studied that art, and not when under my father in the employ of Mess'rs John and Nathaniel Phillips

Cross-examination resumed:

Cross 33. Was there any other peculiarity in the selvage of your fabric than those you have already mentioned?

466 A. I do not think of any just now.

Cross 34. The wire that was introduced was withdrawn as the fabric was woven, was it not?

A. Almost universally so.

Cross 35. In the sample of narrow webbing shown you by M'r Sawyer, was the selvage-cord a bare cord of rubber, and did the weft thread go entirely round the rubber warps, including the selvage rubber cord?

A. I have already answered several times that I have no recollection of paying any attention to the selvage; that I momentarily looked at the body of the fabric, and have already stated all that I know and can state about the fabric.

Cross 36. Do you claim that every elastic fabric, the body of which has the rubber cords confined by the weft threads only, is within your patent, regardless of the selvage, whether it has the round selvage, frilled selvage, or otherwise?

(Objected to as calling for a legal construction of plaintiff's patent.)

A. I have no wish to take upon myself to state what my claim is, but leave it for the courts to decide.

Cross 37. Describe the selvage in sample No. 8, to which you have referred.

A. It is several months—rather, it is some time, several months, I think—since I saw Exhibit No. 8, and the exhibit will show for itself.

Cross 38. Please describe it.

A. I'll give the best description of it I can recollect: It was round, or partly round, and there had been a wire or its equivalent introduced in the weaving of it.

Cross 39. Was it covered by anything except the weft threads?

A. I don't recollect anything.

Cross 40. Did the weft threads pass entirely around the rubber cords?

A. No.

467 Cross 41. Did it pass first on one side of all the rubber cords, except the selvage rubber, then around a selvage rubber cord, then across on the other side of the central rubber warps, and then around the other selvage cord, and so on?

A. As far as I recollect, the weft thread passed over the upper surface, the weft thread being partly bound around each rubber cord after the weft thread had passed across the under side of the fabric.

Cross 42. How did it pass around the selvage cord?

A. That I cannot say, not having seen the goods made, nor the looms whereon it was woven; not to my knowledge.

Cross 43. How positive are you that it did not pass entirely around the rubber cord?

A. I am not positive, but cannot say it was done.

Cross 44. Where was your first place of business after you arrived in this country?

A. It was in Attorney street in this city, a little way north of Grand street.

Cross 45. How long did you continue your place of business there?

A. I do not think I continued longer than twelve months there.

Cross 46. Where did you then move your place of business to?

A. I moved my machinery into Eldridge street, a little way north of Grand street.

Cross 47. How long did you remain there?

A. I remained there until the spring of 1849.

Cross 48. Where to did you move your machinery in the spring of 1849?

A. I moved it to Pearl street in this city, to work it by hand instead of steam power, near Maiden Lane.

Cross 49. Cannot you describe the place more accurately?

A. No; I was in it so short a time. I don't think I was in it over one or two months at farthest.

468 Cross 50. Who was your landlord?

A. I don't recollect.

Cross 51. How many rooms did you occupy?

A. I think I only occupied one, for this reason, that through the cholera being in this city, the cholera beginning at New Orleans the Christmas previous, my trade fell by degrees entirely away during the spring, having goods consigned for sale in Boston, Philadelphia, Baltimore, Cincinnati, Louisville, and S't Louis. My sales in New York had fallen away from about six thousand dollars a month to one dollar and fifty cents, and that I never got paid for. The goods had fallen in value, some of them $6 per dozen to $1.50, and silks which were worth in their unwoven state from $9 to $11 per pound, if manufactured into fabrics would not be worth more than $2 or a little over. My payments becoming due, although I had in property upwards of a thousand per cent. more than what I owed, I gave judgment to a creditor, to one who had nothing due him. He put the sheriff in upon me and entered the judgment; sold my property out, excepting some of the machinery which he suffered me to hold as my own; and other parties hearing of it who held goods on consignment, sold out the goods at any price, and left me nearly as much in debt as I was before. As I had but three or four creditors, whose aggregate amount would not exceed three or four thousand dollars, who had extended their time of payment six months, telling me if I wanted any further time they would give it to me with pleasure, and there was no necessity for the man that I had given the judgment to to act as he did. He bought himself a' the sale black tram silk at $1 per pound, which about a month before the sale I had given him $11 per pound for; there was a bale of white imported linen thread, which he had imported for me at my request, but which had never been delivered to me, that also came to the auction to be sold; he bought it himself, and charged me with the difference in price.

Cross 52. Did all this take place while you occupied the room on Pearl street, near Maiden Lane?

469 A. The first part of my previous statement took place before I went there, and the latter part took place while I was there.

Cross 53. Who was the person to whom you gave judgment?

A. His name was Connagh. I think Joseph was his first name. His place of business was in Beaver street. Who he was I can't say; but, by his conversation, I took him to be of Irish descent, and had been doing business in Manchester, England. I believe, from information, that they have both been dead some years.

Cross 54. In what court was the judgment obtained?

A. I don't know; it was something that was written out in their office; I can swear that I never swore to it; he stated his object in getting the paper was that if my creditors would not extend the time he would step in between them and me and render them powerless.

Cross 55. When you consented to judgment where was your place of business?

A. It was in Pearl street, before described.

Cross 56. Did all the proceedings under it take place while you were there?

A. They did, that is, all I have described.

Cross 57. What is black tram silk, and for what purpose did you use it?

A. Tram silk is silk of one or more folds of silk put together, thrown with a single twist into it all one way; the purposes it is used for are many; I used it for covering cotton cord, and making it into gimp; also for the heading of different kinds of dress and parasol fringes, and generally in all things where I wanted a small weight to cover a great surface.

Cross 58. Did you use that kind of silk in making elastic webs?

A. When I did make them I did use what they called tram, but there was no tram silk in this market at that time, nor for years afterwards, of such a quality to make first-class goods economically.

470 Cross 59. Did you ever use or know to have been used in the making of gusset webs of tram silks like that sold on the judgment?

(Objected to by counsel for Smith as irrelevant to the issue, and not called for by the examination-in-chief.)

A. At the time of that sale of the tram silk under the judgment I did not know of any one manufacturing either tram or organzine in this country; the tram spoken of was imported from England, wound on spools, 16 to the pound, and each pound put in separate paper boxes labelled "Black tram," or whatever color it might be; the quality of the tram alluded to was called "Bengal tram," a poor cheap kind of silk, which was uneven in the thread, and would not produce as bright a color after being dried as a better quality of silk; I have seen in after years tram made of the same quality of silk in this country.

Cross 60. Please answer the last question.

A. That I cannot say; I don't know.

Cross 61. How much machinery was left you after the sale on the judgment?

A. I think 3 large machines, a silk-winding machine, warping mill, and some shafting and pulleys; there might have been some other things which I don't remember, probably there was, and perhaps some material, the worth of which was about $2,000; there was everything necessary for working the machines.

Cross 62. Were any of these machines for weaving?

A. These were all for weaving, except the silk-winding machine.

Cross 63. When did you move from Pearl street, and where to?

A. I moved from Pearl street I think about June, in 1849; I think June; I won't be certain; and I moved to a small factory in 15th street, between 8th and 9th avenues.

Cross 64. Did you take all the machinery that was left with you?

471 A. Yes.

Cross 65. Who was the owner of that factory, and how long did you remain there?

A. I don't know as I ever noticed his name; it was Copcut, or something like that; he lived in Hudson Square, and kept a lumber yard on the North River somewhere; I think I remained there till the end of October same year.

Cross 66. To what place did you move in October, 1849, from said two-story factory?

A. I removed my machinery to Newark; it was in October or November, I believe; I can't say positively without referring to my memorandums, if I have any.

Cross 67. Did you make any elastic web in said two-story factory on 15th street before you went to Newark?

A. I did not in the factory, but I made a sample of elastic webbing before the time that I went in the second-story factory.

Cross 68. Was that sample like the fabric patented by your division B?

A. It was.

Cross 69. Did you ever make any other kind of elastic fabric than that patented by division B?

A. I did.

Cross 70. Before or after the making of said sample?

A. After.

Cross 71. Where?

A. In Newark.

Cross 72. In what respects did said fabric differ from that covered by division B?

A. The elastic cords lay in a sheaf or tube, the upper and the lower cloth being bound together with binding threads, being a suspender web with a round selvage, made in December, 1849, or beginning of January, 1850.

Cross 73. When, after the making of said sample or elastic web according to your patent, did you make any more?

A. I made an attempt in November or December, 1849, but
472 could not procure a proper material to make it, nor could I get steam power of that quality or regularity that would make marketable goods, most probably, if I had the proper material; I did make goods, such as they were, in November or December, 1849, but they were not saleable.

Cross 74. Did you make them with hand or steam power?

A. I think it was by water power; they were not made by hand.

Cross 75. What quantity of such goods did you then make, and what became of them?

A. I can't state the quantity that was made, nor can I state of my own knowledge what became of them; but I have heard certain parties swear in the court of common pleas, in this city, that they kept them to light their stoves with.

Cross 76. What parties?

A. I heard a man by the name of John R. Wakeman swear to that; I heard some of his clerks, as supporters, swear to the same effect; and took my counsel and lawyers out of court round into Chambers street, in this city, to look where he had a stove, him and his partners, to look at the residue that was left, as being utterly worthless and fit for no other purpose; this was in March, 1858.

Cross 77. How came Wakeman by them?

A. I suppose he thought he had a better right to them than any one else.

Cross 78. When did they get into his possession?

A. I believe he took forcible possession of them by a forcible entry and detainer.

Cross 79. About how large an amount of such goods did you make?

A. That, I have already stated, I can't say. I have no means of forming an opinion.

Cross 80. Was it a large or small amount?

A. That I can't say. It was not a very large amount.

Cross 81. Did you, after November or December, 1849, make any goods such as were subsequently described in your patent, division B, on hand-looms.

473 A. I did.

Cross 82. When first?

A. The first that I made for sale was in the spring of 1851.

Cross 83. Where were they made?

A. I made them in a room in a house-top in Cherry street, close to Franklin Square, behind and adjoining the store of Firth and Pond, piano manufacturers and music-dealers, said house said to be the headquarters of Washington when he was in New York.

Cross 84. On what kind of a loom was the first sample made in June, 1849?

A. On a hand-loom.

Cross 85. How large an amount at that time?

A. I made a strip of it. I can't say how long it was; I only showed it as a sample as what I intended to get a patent out for.

Cross 86. What became of that strip?

A. Some of it I cut off for parties to see it; I think it all went that way from first to last; I have not got it nor seen it, to my knowledge, since the year 1849.

Cross 87. What persons did you show it to?

A. I showed it to a man who had some connection with an auctioneer in Fulton street; he is dead now, and I can't recollect his name; I believe I showed it to Dodd & Wakeman, in Newark; it was but a small piece; I have not had it in my mind to think much about from that time to this.

Cross 88. Can you remember no other persons?

A. No; I didn't show it to a great many; I had the cholera, and while in the two-story factory, while walking across the upper story, there was a trap-door in the middle of the floor unknown to me, which I afterwards ascertained was only secured by some lathes under it to hold it; early one morning, before my men had arrived, I had gone into the factory to do something to the machine, I stepped on the trap-door,
474 which was a large one, and fell to the story below, and the door fell upon me, and I broke all or nearly all of my ribs on my left side; was insensible for about three-quarters of an hour; was confined to my bed over two months, and could not go about to exhibit the sample to any one; this occurred in the summer months, I think the latter end of July or beginning of August; I had the cholera while lying sick in bed.

Cross 89. Where at that time did you live and who was your physician?

A. I boarded at a German house on 9th avenue; I think on the corner of 19th; I don't recollect the name now; I know he worked in Herring's safe manufactory; it was at the time some Irish refugees came over, three in number, and came there to board; I think O'Gorman was one, the present corporation counsel; my physician was a gentleman named Hosman, who resides somewhere about 8th avenue, where I don't know, as I only saw him in my sick chamber.

Adjourned till Dec. 2, 1869, at 11 a. m.

NEW YORK, *Dec. 2d*, 1869—11 a. m.

Present, counsel for respective parties.

Adjourned till Dec. 3, 1869, at 1 p. m.

NEW YORK, *Dec. 3d*, 1869—1 p. m.

Adjourned till Dec. 4th, 1869, at 10 a. m.

NEW YORK, *Dec. 4th*, 1869—10 a. m.

Present, counsel for respective parties.

Cross-examination of William Smith resumed:

Cross 89 *a*. Was the sample of the goods that you said you made in 1849 made with a standing warp and two weft threads, one on each side of the standing warp?

475 A. It was not.

Cross 90. How was it made?

A. It was made with a single shuttle in a hand-loom.

Cross 91. What kind of a selvage had it, how were the rubber cords covered, and how many fibrous warp threads were between the rubber cords?

A. I can't exactly recollect how many warp threads there were between the rubber cords, but my object was to put in as many as I could possibly work with, to make the goods to hold the weft threads tight, and partly around the rubber, to hold the rubber threads tightly in their place, that when the fabric was cut bias in the shape of a gore for a Congress boot, the rubber threads would retain their place; the rubber cords were covered with the weft thread; the selvage was made by running a wire with the selvage, to allow the edge rubber to contract equally with the other rubber threads in the body of the fabric.

Cross 92. Was the selvage cord of rubber only?

A. Rubber and weft threads, as far as I recollect.

Cross 93. Did the weft threads go entirely around the rubber cords, passing first on one side and then on the other?

A. The weft threads in passing over the upper surface were compressed partly around each rubber cord, in passing under the under surface, were compressed partly around the under side of each rubber cord; all I can say is that they went partly around each cord as they passed under and over the lower and upper surface.

Cross 94. Did the weft thread pass entirely around and around the whole body of the rubber warps?

A. It passed entirely around and around, after the manner I have before described.

Cross 95. Did you make any other elastic goods until you made them on the power loom in November or December, 1850?

A. I think not, but I can't recollect whether I made another sample or whether it was the first sample I made to show to M'r William

476 Judson; I know that him and me had several negotiations and several meetings to form a partnership to bring out this here patent; he drew the articles of agreement up, but they were of such a rascally nature that I attempted to push them down his throat, and declined to have anything further to do with him.

Cross 96. Were the goods made on the power looms in November and December, 1850, made with a standing warp and two weft threads, one on each side of the standing warp?

A. They were not, but my first discovery of that principle was in 1846, in Eldridge street, in this city, whilst I was altering my looms for making block patterns for dress and parasol fringes; what I mean by block patterns is this, so many wefts of one color and then so many weft threads of another. In the alteration of my looms at that time, with rising and falling shuttle-boards, I invented a method of driving both sets of shuttles alternately, there being two rows of shuttles to each fabric, with one driver or propeller to give the necessary force to drive the shuttles through the fabric, which had never before been done, nor

ever since to my knowledge. It was then that I discovered the art of making a fabric whereby the shuttles could pass each other simultaneously, but not wanting myself such a fabric made, I did not give further attention to it until my misfortune came upon me in forty-nine, and urged me forward.

Cross 97. Did you make any of the fabrics which you made on the hand looms, and which you put on the market, as you have said, with a standing warp and a separate weft thread on each side thereof?

A. In the spring of 1851 I attempted in the hand loom to make such goods, but I found so much loss of time changing the shuttles by hand, I then made an attempt to remedy that defect by fixing the hand loom to work with what was called in the trade at that time a picker-staff, but found I lost more time attempting to make the goods that way than changing the shuttles at each pick of the weft by hand. I then ordered two power looms to be made by a loom-maker; one of the looms
477 was a double-shuttle loom, to make eight pieces of fabric with a standing warp; the other was a forty-shuttle loom, to make narrow elastic fabric, with a single shuttle to each fabric.

Cross 98. Where was your place of business when said two looms were ordered?

A. I was making goods in a hand-loom top of Cherry street, next to Firth and Pond's music store, in Franklin street.

Cross 99. When was said double-shuttle loom completed?

A. I think it was delivered to me in November, 1851—both of them. I had great difficulty with the man that made them, he giving himself up that year to become a drunken man. I kept paying him money, making advances on the looms from time to time, and about the time they were delivered he had had the whole money except, I think, forty dollars. When I gave him the plan of them, in May or June, he said he would have them ready in about six weeks.

Cross 100. What is that man's name, and where is he now?

A. The man's name was David Thom. He had made all my looms, and a good deal of other machinery, between '45 and '49. He then resided in Thirteenth street, a few doors west of 8th avenue. I think in 1849 he bought a lot of ground in 26th street, between 7th and 8th avenues, built himself a house and workshop, put in a small steam-engine. It was at that place where he made my looms in 1851. In the spring of 1852 he sold out his property and went to California, leaving his wife and children behind. His wife died a year or two after he went away. His eldest daughter, after growing up to womanhood, I heard was found drowned in the pond in Central Park. I've heard also that he died in California, and I've heard also that he is living. That is all I can say about him, where he is, or what he is.

(Counsel for the respondent requests the witness simply to answer the questions put to him.)

478 Cross 101. Between what dates were you at this place, at the top of Cherry street? When did you first go there, and when did you leave?

A. I think I went there the beginning of January, 1851, and I left about twelve o'clock on the first day of May, 1851.

Cross 102. To what place did you move, and what machinery did you take with you?

A. I removed to 20th street, a little way west of Sixth avenue, to a new house. The landlord kept a grocery store in the bottom of the same building, by the name, I think, of Ramsden. I won't be positive. All the machinery I took with me was the little hand-loom just spoken of.

Cross 103. How long did you remain there?

A. I remained there twelve months, into 1852.

Cross 104. State when you left there to where you removed, and what machinery you then took with you.

A. I left there on the 1st May, 1852, and I then took a floor in a house in 8th avenue, between 37th and 38th streets. The man's name was Gardiner that I took the floor of, and kept a dry goods store under the first floor, and was a manufacturer of umbrellas and parasols down town. I didn't take any machinery with me.

Cross 105. What became of your machinery when you moved?

(Witness requests to know what the counsel means by the word "machinery.")

Cross 106. Question repeated.

A. If by the "machinery" he means the little hand-loom, when I had no further use of it, in 1851, I split it up into kindling-wood to light the stove.

Cross 107. At what place were the two looms, double and single shuttle, delivered to you?

A. They were delivered to me at the factory of one M'r Serrell, who was the brother of L. W. Serrell, patent solicitor, in Nassau street.

479 Cross 108. Did you weave goods on said double shuttle loom at that place?

A. I did.

Cross 109. When, to what amount, and what became of them?

A. I know I made in December, 1851, and I might have made some in November; to December, I am positive. The amount I cannot say, but when I had made one lot of goods I had to sell them in small quantities, where I could, for ready money, to buy materials for making more.

Cross 110. Were those goods made with a standing rubber warp and two weft-threads, one on each side?

A. They were.

Cross 111. Was said double-shuttle loom the first loom of the kind you ever saw?

A. It was; or any one else saw.

Cross 112. Were goods made upon it the first goods of the kind ever made to your knowledge?

A. Excepting those goods I tried to make in the single hand-loom.

Cross 113. Did you succeed in making any in the single hand-loom?

A. I did; but it was too laborious to be profitable.

Cross 114. What amount of goods did you make on the single hand-loom?

A. I only made a few yards.

Cross 115. What became of said goods?

A. I can't say particular; I suppose I sold it when selling other goods.

Cross 116. Did you ever before 1852 make any elastic fabrics of any kind, other than you have described and said you have made in this deposition?

A. Not to my knowledge.

Cross 117. Did you ever import any elastic fabrics before the date of your patent, April 5th, 1853?

A. I never did.

Cross 118. Did you purchase any in this country, and afterward sell them?

480 A. I did not; nor ever saw any except they were suspenders; them I never purchased nor examined, to my remembrance.

Cross 119. To whom did you make your first sales of elastic web suitable for shoe-gores?

A. I think the first piece of webbing I made measured four yards and a half. I went about among different shoemakers in the lower part of New York, and in Fulton street and Atlantic street, Brooklyn. I sold it cut off in nine-inch pieces, sufficient for one pair of gores. I think the first customers I had was two foreigners that kept a little narrow store in Cliff street, and had a great gilded boot hanging in front over the door. I saw the same parties at that store working on the bench three or four years ago. I've seen the big boot over the door until one or two years ago, which I have missed it, and the building has been altered into a larger store. I don't recollect the street number nor the names of the foreigners. I sold some of it out of that, the first or the next—the second lot I made—to J. T. Whitehouse, in Atlantic street, Brooklyn, one of the present defendants.

Cross 120. Does your last answer refer to the single web made on the hand-loom, or the union web made on the double-shuttle loom?

A. It refers to the web made on the single hand-loom.

Cross 121. Do you remember selling any of said web to any other parties?

A. There was a man in Atlantic street then, on the opposite side of the way from where M'r J. T. Whitehouse kept, by the name of Conroy or Conway, or something like. I think I sold some to a Frenchman, higher up in Atlantic street, by the name of Keith, who made a better class of custom work than any of the others in Atlantic street, but it was neither out of the first nor second lot of goods that I sold to him. There was another man nearer the ferry than J. T. Whitehouse, on the same side. I don't know his name, but I called on him several times that summer, talking over Day's patent and over mine, which I intended to get out. I saw the same gentleman in this very room, and
481 spoke to him, a few weeks ago. Whether I sold him any goods or not I can't positively say, as I called upon many parties who didn't buy at the time, being afraid of persecution from Day, also not knowing whether they would be approved of by their customers.

Cross 122. Was said last described person's name Cichton, Creighton, or like these names?

A. That I cannot say, but I've a faint impression that there was such a name on the same side as J. T. Whitehouse, nearer to the ferry, but as far as my memory serves, he sold all ready manufactured goods, kept a man for mending, but sold custom-made goods.

Cross 123. Did you sell any elastic fabric for shoe gores to Clark W. Carey?

A. I sold, in 1851, to Mulford and Cary shoe gores; I think when I was in Washington, and may be in New York, I requested M'r Serrell to get his affidavit to that effect; there was a mistake made in the affidavit by putting in 1850 instead of 1851; said affidavit I cannot find on the files of the Patent Office, although I have wrote and received from the Patent office all that is said to be all on file since April, 1867, but I don't find said affidavit of Cary in them, nor can I just now find a copy of it, although I know to a certainty I have had such copy in my possession.

Cross 124. When did you discover said error in said affidavit?

A. I discovered it a few months ago, mentioned it to my counsel, had him subpœn'ed up here once or twice on the subject, but through ad-

journments, or one cause and another, when he appeared he did not testify; he is now to appear by subpœna whenever I want him; he has left me his address.

Cross 125. What is his address?

A. He wrote it on a little piece of paper with a pencil, which I have somewhere in my office; I think he said he was living in Staten Island; I was in a great hurry when he gave it to me; folded it up; don't recollect reading it; I think he said he was going into the insurance business.

482 Cross 126. Do you find any other erroneous affidavits filed on your behalf at the Patent Office.

A. I found one other, which was procured about or at the same time, where the same mistake was made.

Cross 127. Who procured said affidavit?

A. I believe M'r Serrell procured them, because of some correspondence which he was having with the Patent Office at that time, what it was I can't say now; he mentioned it at the time to me, and I think I referred him to get affidavits of said parties.

Cross 128. Whose was said other erroneous affidavit?

A. John Reid's.

Cross 129. Were there any other affidavits filed at the Patent Office of persons stating times of sales by you to them of elastic webs?

A. I do not recollect any; the files of the Patent Office have been so tampered with in my case, that I know of several which ought to be on file which can't be found there.

Cross 130. Did you ever procure any affidavits except the two mentioned, to prove to the Patent Office when you sold elastic web?

A. I have not any recollection of doing so; I think I made affidavit myself that I made the goods in 1849; if there is such an affidavit has been ever filed at the Patent Office, I cannot find it on file, nor the proper officer who has the care of them can't find such an affidavit, but the defendants probably may, if they think they require such a one.

Cross 131. Was your affidavit made at about the same time, and for the same purpose with the affidavits of Cary and Reid?

A. That I can't recollect, as I have made several, and consider it merely a clerical error.

Cross 132. What do you consider merely a clerical error.

A. Putting in the wrong year of the Lord, the same as anybody may make.

Cross 133. Do you mean it was a clerical error in putting 1849 for 1850 in your own affidavit?

483 A. I don't recollect by memory that I ever said I sold goods in 1850 in my own affidavit; if there is such an affidavit of mine it is a clerical error.

Cross 134. Did you make affidavit in which you said you sold elastic goods in 1849, and is that true?

A. I have no recollection of making such an affidavit; I recollect making affidavit that I made the invention in 1849; if there is such an affidavit I don't recollect noticing it, and if such affidavit is in existence the date has crept in by mistake, and was not aware of it at the time I signed it, as I never sold goods to any party whatsoever, that is, elastic fabrics, until the spring of 1851, as I have already testified.

Cross 135. If your affidavit is on file that you made elastic goods in 1849, is that true?

A. I can't distinctly remember what affidavits are on file of mine, and can't say whether such an affidavit of the present time was made; my

memory doesn't serve me to say, but I believe that an affidavit is on file of mine that I made the invention in 1849; speaking to the best of my memory, I did make a sample of elastic fabrics in 1849, a small piece, which was not intended for sale in the market, neither was it so sold.

Cross 136. Was that invention referred to in your affidavit, which you say you made to that effect, on file at the Patent Office? I mean, was the making of that sample in 1849 the invention you referred to in your affidavit, wherein you said you made your invention in 1849.

A. What I particular said in my affidavit I cannot recollect from memory, but the sample which I made in 1849 referred to that part of my invention under division B, but not to those parts of my patent continued under A and C.

Cross 137. Do you claim to have invented the single elastic webbing?

A. The sample that I made in 1849 was the first woven elastic webbing I ever made or saw made according to my claim in my patent, division B.

484 (Witness asks counsel to explain more fully his meaning in the words "single elastic webbing.")

Cross 138. By "single elastic web" I mean a web as distinguished from the union web, that is, a web with a single weft thread carried firstly across one side of the rubber warps and then across the other, and held against the rubber warps by being interwoven with the fibrous warps between the rubber warps, and not a web where there are two weft threads, one passing to and fro on one side of the rubber warps, and the other weft thread on the other side?

(Objected to as immaterial to the issue.)

A. I think myself not called upon to decide the question which is now in court, but according to my opinion, under my claim in division B, any fabric which is made according to that claim is my invention, whether it is made in a loom or in any other manner produced.

Cross 139. The question is not for a construction of your patent; it is whether you now will say that you were the first inventor of the single elastic web, as described in cross-int. 138.

A. As far as my knowledge goes, which I swore to at the time I took out my patent, I was the first inventor of elastic-woven shoe goring, or any other elastic webbing or fabrics ever before made or described, made according to my invention; I believe there was gum webbing made for suspenders before my invention, but not made according to my invention, for the which I obtained a patent.

Cross 140. Please state whether you claim to be the first inventor of the single elastic web described in cross 138?

A. I have answered that question before in this cross-examination, and what the counsel wants anything further than what I have already answered I do not comprehend; but I do not consider my claim

485 confined to the interlocking of the warp threads with the weft threads, but the new properties which my fabric contains different from any other known fabric made or used, which has thrown most of other kinds of webbing out of the market, and which the manufacturers of suspender webbing eagerly followed after my fabric was introduced into the market.

Cross 141. Question repeated.

A. I have answered that.

Cross 142. Please say yes or no in answer to that question.

A. I have given the answer to the best of my ability, and have answered it before in my cross-examination; can't understand the counsel when he asks me to answer any more than I have already done.

(The witness respectfully requests the counsel to confine his questions to the matter at issue in the Glendale Elastic Fabrics Company's suit.)

Cross 143. Do you decline to say whether or not you were the first inventor of the single elastic web as described in cross 138?

A. I don't decline to say anything; but this I do say: I have given the best description of it which I am enabled to do, and will leave to the court to say whether I am the first inventor or not.

Cross 144. Were the webs made at Newark, while you were with Messrs. Dodd & Wakeman, single or union web?

A. What I attempted to make at Messrs. Dodd & Wakeman's was single web, excepting the suspender web.

Cross 145. Did you make no attempt at a double-shuttle loom while you were with them?

A. I did not.

Cross 146. Did you make no attempt to use a standing warp while with them?

A. I did not.

486 Cross 147. Did you ever, while in England, weave any goods, elastic or inelastic, wherein a corded warp was confined on both sides by the weft thread only?

A. No.

Cross 148. Did you ever have a piece of fabric shown to you by your counsel, M'r Serrell, sent by the Patent Office for your examination, or did you receive a piece of fabric sent by the Patent Office to you in which the cords were elastic and confined by the weft threads?

A. I have no recollection of such a fabric as described. I recollect something about some communication with the Patent Office, and of them sending a sample of webbing down, which sample was made, if I recollect correctly, of native rubber, which had become rigid or nearly so. I think the color was drab or a lightish brown on the face side, and the back was of a white cotton warp, which cotton ran longitudinally with the rubber cord, and whatever the surface was made of, whether silk or otherwise, there was just equally as much of the under surface lying hid and not in view under the white longitudinal cotton warps as there was upon the face surface of the fabric.

Cross 149. Were the rubber cords covered at top and bottom by anything but the weft thread?

A. They were covered with the warp thread; the weft on one side was entirely hid from view. Where that sample was procured by the Patent Office I do not know. I have examined the files of the Patent Office several times since 1867, and could not find anything of it except a letter from M'r Serrell, in answer, referring to it.

Cross 150. Was that letter written after conference with you?

A. That I cannot state.

Cross 151. Did you see it and read it before it was sent?

A. I did not. To the best of my knowledge I never saw it till I saw it on file at the Patent Office. M'r Serrell used to question me about matters when I would be down town at that time, and I did not know what answer he would make at the time.

487 Cross 152. What are union galloons?

A. At the time I manufactured them the difference betwixt union galloon and all silk galloon was this: In union galloon the weft, instead of being silk weft, was a cotton two-cord weft thread, being made out of good quality of cotton, to be even and uniform, somewhat similar to sewing cotton thread.

Cross 153. Were both sides alike?

A. They were as far as material was concerned, but in fixing the loom for making of them the roller that ran across the loom, from end to end under which the silk warps came, was raised a little higher than the level of the breast beam, the effect of which was this: when the shed opened for the weft to pass through the shed, the top shed would not be so tight; the under shed bearing a greater part of the weight attached to the warp to keep it tight would cause more silk of the warp to lie upon the surface of the goods; that caused the fabric to be a little oval on the upper face side, and the under side would be a little hollow.

Cross 154. Was there any other statement in M'r Serrell's letter to the Patent Office regarding the sample sent for your examination?

A. That I cannot say, for I do not recollect what the letter contained farther than that it referred to some sample.

Cross 155. Did you notice any error when you read it?

A. I didn't notice whether there was or not. I was looking for the sample, and just glanced the letter over. I recollect asking M'r Serrell to hunt it up when he went to Washington, and he couldn't find it; and when there myself I looked for it and I couldn't find it.

Cross 156. Did you never find it?

A. I did not.

Cross 157. Where was said letter when you looked it over?

A. It was on file in the Patent Office; I think I saw it there.

488 I didn't consider it of any consequence whether the sample was there or not; took no further notice about it. Made enquiry of the man who handed them to me to look over. He said that was all there was on file, and he had never seen any samples.

Cross 158. What persons are assisting you in the prosecution of your suits upon your patent?

A. I have a certain amount of one-quarter the expense, as per agreement, from Faxon & Elms and William Boyce and Sons; the other three quarter parts I find myself.

Cross 159. How much have you received or are you to receive from said parties besides the quarter part of the expense?

A. I decline to answer that question at the present time without first consulting with my counsel, who are not present. Further, that question has been already raised in the suit, and answered by W. Boyce & Sons and Faxon & Elms.

(M'r Smith's counsel instructs him not to answer.)

Adjourned till Dec. 6th, 1869, at 11 a. m.

NEW YORK, *Dec. 6th*, 1869—11 a. m.

Present, counsel for both parties.

Cross-examination of William Smith resumed:

Cross 160. Can union web be made with a movable warp?

A. It can, with rising and falling shuttle boards; but I never knew union web made prior to my invention, and for several years after (excepting what I made myself), but what the cotton warp on the back of the fabric run longitudinally on the same plane as the gum India rubber warps.

489 Cross 161. You mean that the cotton warps ran longitudinally on the same plane with the elastic warps while being woven, do you not?

A. I do; and, further, that the cotton warps that ran on the back were confined to the back, and were not so interlocked with the other warp threads as to appear on the surface of the goods.

Cross 162. To what extent did you ever put elastic fabrics on the market?

A. That I can't give any exact answer to from memory; in the first part of my putting them in the market I sold everything for cash down without discount; I should say that until the time that my patent was got out from under my control, by forgery and fraudulent assignments recorded in the Patent Office, of my patent, I suppose I had put on the market seventy or eighty thousand dollars' worth.

Cross 163. Made according to your patent?

A. Made according to my patent in its several divisions, some according to division B, others according to div's A and C.

Cross 164. In what respect do the fabrics of said divisions differ from each other?

A. Some differed in making it all silks, with single shuttle, under div. B; some I made with throwing the cotton weft at right angles with the rubber at the back of the fabric; some I made with a cotton weft running at right angles with the rubber cords, with an additional cotton warp running longitudinally with the rubber cords on the back of the fabric, under divisions of my patent A and C.

Cross 165. Is there any difference in the fabrics of all silk, single web, and all silk, double web, when woven, as to their being within your invention or otherwise?

A. All the goods I made I made under my invention; sometimes in making I only threw one thread around the rubber cord and the wire, at other times I threw both the silk-weft threads around the selvage and the wire; in making the single web with one shuttle, I always threw the silk around the selvage and the wire.

490 Cross 166. In both single and double shuttle web, is there any difference in the way in which the rubber cords are covered and held in the fabric? If yes, state it.

A. What difference other manufacturers might make in them I will not take upon myself to say, but in all the goods I made myself the weft threads was compressed tightly upon the rubber cords, and went partly around them, excepting, perhaps, those goods which I attempted to make at Mess'rs Dodd & Wakeman's.

Cross 167. How was it with those goods?

A. That I can't recollect; but think the weft went partly around the rubber cord; but being so long since I saw any of those goods that I can't speak from memory.

Cross 168. Do you recollect any respect in which the goods made at Dodd & Wakeman's differed from the single web made under your patent?

A. As I said before in regard to the goods made at Mess'rs Dodd & Wakeman's, I cannot distinctly remember; but this much I do remember, that the looms for that purpose could not be operated with successfully for divers reasons; first was, that the power was so irregular, the looms running sometimes about sixty revolutions a minute, sometimes as low as forty, varying from that to one hundred and forty, and, as my looms was then constructed, the shuttles had to pass through the fabric by propulsion; when it was at its slow speed, the propulsion was too weak to drive the shuttle across the fabric, when it was at its greatest speed the propulsion was so great that the shuttles bounced back out of their place after going through the fabric into the shed, causing the interlocking warp to interlock upon the shuttles, cutting nearly all the warp threads out of the loom, causing about a day's delay to put them in, and spoiling the fabric; secondly, in the variations

of speed in the looms there had been a spring in the shuttle to govern the tightness or slackness of the weft thread, and the action of that spring depending upon the speed of the weft thread drawn from the shuttle, when the loom was at too great a speed the friction was
491 so great on the weft thread that when the lathe came to the fabric the selvage would be so tightly drawn in, so much narrower than the fabric in the reed, as it was put in the reed, the reed would cut the selvage on each side out, both the rubber and warp; when the loom went at too slow a speed the friction was too weak, causing the selvage to bulge out, and the rubber cords to lie too loosely in the selvage, and varying the width of the fabric nearly half an inch in width; thirdly, to try to remedy this defect in the speed, we had a pair of cone pulleys made, but they proved to be nearly useless, as the variation of the speed being so constantly varying the strap on the cone pulleys was always in motion and kept slipping, thereby stopping all my machinery; also some ill-disposed person kept applying black lead on the journals of the cone pulleys, which caused so great a friction on the straps of the cone pulleys that the machinery could not be run, and it took me a week to find out what had been done.

Cross 169. What became of the two looms delivered to M'r Serrell's factory in November, 1851?

A. I carried them to Patterson in 1856.

Q. What kind of loom, with two rows of shuttles, do you refer to in your answer to cross 96?

A. It had a rising and falling shuttle board to operate with one shuttle at a time; I think I carried it to Dodd & Wakeman's; but when there, or before they went there, I made the shuttle-boards a fixture, so that they could not move up and down. I was informed afterwards that Mess'rs Dodd & Wakeman, one or both of them, disposed of said looms to Hotchkiss & Merriman, of Connecticut.

Cross 171. Could Union goods have been woven on that loom, according to your patent, division A?

A. With some alterations they could have been; but I designedly kept the knowledge from Mess'rs Dodd & Wakeman of that part of my patent, which I intended to procure, of making Union goods with a standing warp, waiting to see how they would perform and fulfil their agreement which they had made with me, they wishing to pur-
492 chase the looms and appurtenances from me, which I refused to sell to them; they then broke into the premises, took forcible possession when I was away from the premises, barred up the doors, kept men inside with bars of iron to keep me out if I should attempt to break in, which I did do, borrowing a sledge-hammer from the blacksmith's shop in the yard; went in through the hole in the door which I made, drove the parties out, had Dodd and Wakeman arrested; the case was tried in Newark, and carried up to the supreme court, at Trenton. I further remark that they again got possession of the premises and the machinery, there being a cockloft running along the whole length of the building, and my rooms being one end of the building under the cockloft, they came in the night-time, along the cockloft as I suppose, and broke into my premises and took possession of the machinery. I will add to this, that there might be a little variance in the details, as I state from memory, but the facts are substantially true.

Cross 172. Why did you make stationary the two rows of shuttles?

A. I didn't want to use more than one row of shuttles, and if my impression is correct, I cut the shuttle-board so that it would not carry but one row of shuttles; but I am not positive of this.

Cross 173. Did you make any attempt, in 1846, to use a stationary warp? If yes, state what you did.

A. No, not to make any fabrics; this much I did do, I think, in making the edge of silk fringes, the bottom silk thread in the heading, where the fringe commences, would be apt to spread out and run from the heading; it was usually corrected by interlocking the two bottom warp threads, after the manner of interlocking musquito netting; to save the extra mounting and gearing of the loom I might have fixed a few threads of cotton cords to lie against the bottom silk thread in the heading of the fringe to keep close up to the heading, the cotton cords drawing out in the process of making the fringe; it was then that I conceived and saw where a standing warp could be used in mak-
493 ing a great variety of fabrics. I think, to the best of my recollection, I might, as I made these fringes with the headings on both sides and sometimes only on one side, I might have used three cotton cords for each heading. I think I moved the middle cord, but whether I moved them alternately, first one and then two, I can't remember, but I know well that that was the time I conceived the project of a standing warp; that is all I did at that time, as far as my recollection goes.

Cross 174. To what extent and for what length of time did you use said cotton cords in making fringes?

A. I used them as long as I made any fringes, till 1849; whether any other manufacturer used them I cannot say. I used them to the extent of, I suppose, several hundred thousand dollars' worth of fringes. I did nothing else at that time.

Cross 175. When did you cease to make elastic fabrics?

A. In 1857 or 1858, excepting something made (a little) in a little model loom I have had made this year.

Cross 176. When you first sold single webbing for shoe gores, made according to div. B, did you employ any other person to sell for you; if so, whom?

A. I did not.

Cross 177. What were the colors of the webbing just made and sold by you?

A. It was black.

Cross 178. Can you tell now the address of Clark W. Cary?

A. I cannot; have had other things to do than to look him up.

Cross 179. Where was he found to be summoned here?

A. That I can't say, as I didn't summon him myself.

Cross 180. Who did?

A. I gave M'r Ferguson the money to summon him.

Cross 181. What affidavits do you know were on file at the Patent Office, and which are not there now? Read, before answering, your answer to cross 129.

A. The first I will mention is the affidavit of E. T. Sawyer,
494 agent and superintendent of the Glendale Manufacturing Company, which is not to be found upon file, although Capt. Castle, under whose care it should have been, has been searching for several months. I have been looking for it myself at different times where it ought to have been, but could not find it, neither could I find the bogus model mentioned in the record in many different places where it ought to have been, amongst the rejected models; neither could the proper officers who had charge of the rejected models find it. When in Washington last, and M'r Dean was taking testimony in the Patent Office, on or about 15th November last, I saw the bogus model and the exhibits that

were attached to E. T. Sawyer's affidavit in the possession of M'r Beadle and Benj. Dean, counsel for the defendants, M'r Beadle saying he had found the bogus model and the exhibits in the cases amongst the rejected models, and the affidavit of E. T. Sawyer had been torn away from the exhibits, and couldn't be found. I've not the least doubt in my own mind that my opponent had the bogus model and the exhibit and the affidavit of E. T. Sawyer under their own private possession and control; that neither affidavit nor models, when filed in the Patent Office, are under safe management and control in that office. There is a second affidavit of Enoch Thomas, which I delivered to M'r Serrell to send to the office to file, which he says he did so, which cannot be found. There is one also of C. M. Cary, which M'r Serrell procured and sent forward in like manner, I suppose, that I could not find any copy of it. These are all I now recollect.

Cross 182. When you saw the model you have spoken of in your last answer, was it not in the library of the Patent Office where the deposition' of M'r Gregory, M'r Jacobs, and M'r Spencer were taken?

A. It was; but I will mention something further: There was another model which was produced against my patent by one Younge, of Columbus, Miss., which I have been very anxious to find for these last twelve months, there being a remnant of a suspender attached to it which I believe is a pattern of a suspender web made many years after the date of said model in Connecticut.

495 Cross 183. Who had said last named model in his hands?

A. That I can't say; the last time I saw it was in the examiner-in-chief's rooms, during the argument concerning my reissues. I have looked for it there and elsewhere without success. Some twelve months ago M'r Charles Mason, of Washington, and myself made a hunt for it, and also for Enoch Thomas' bogus model, in the rooms of the examiner-in-chief, enquired about it of M'r Gregory, examiner in room 7, also went to the machinists' rooms concerning them, and he sent a man with us, I think, to look over the cases of rejected models; couldn't find them. Described them to the man who unlocked the cases for us to examine. He looked at the card, seemingly having a writing in pencil on it, and said Dr. (name don't recollect) had had them both out; my impression is, he said about a month ago.

Cross 184. Was it the Younge model in the library of the Patent Office, where the depositions of Mess'rs Gregory, Jacobs, and Spencer were taken?

A. It was not.

Cross 185. At that time was not a clerk of the Patent Office present, having custody of the models?

A. Not that I am aware of.

Cross 186. When the testimony of M'r Mason was taken by you at M'r Stillwell's office in Washington, were not the models produced there by a clerk from the Patent Office for the purpose of being used in the taking of M'r Mason's deposition?

A. The Younge model was not produced, nor have I seen it since it was produced in the examiner-in-chief's room. The genuine model of Enoch Thomas was produced, also his bogus model, as I understood, under custody of a messenger from the library of the Patent Office, but this was subsequent to the same models being produced when M'r Dean was taking testimony in the library at the Patent Office.

Cross 187. Was not the same person who produced the models at the testimony of M'r Mason present during the taking of the deposition at the library of the Patent Office?

496 A. I saw him in the room some part of the time that the testimony was being taken, but whether he was there officially or not I cannot say, because I saw several persons come and listen a little while and then retire.

Cross 188. Did he not remain there all the time?

A. That I cannot say. I understood he was appointed to bring them down.

Cross 189. Will you swear there was any moment of the time when the models were present that he was not present?

A. I can't swear or say when he was present or when he was not. The first of me noticing the models and the exhibits of M'r E. T. Sawyer was when M'r Dean and M'r Sawyer was looking at them. Further I will say that the day before I was in the examiner-in-chief's room, making enquiries about the model, and M'r Latham, clerk in the said room, said he saw them, M'r Beadle and some other parties carrying them to the room of M'r Gregory, the examiner, No. 7; everybody can find them, only me.

(Counsel for respondent objected to witness continuing after the words "he was not," in second line, but witness insists on his right to continue.)

Cross 190. Did you not understand that the permission of the Commissioner of Patents had been obtained for the use of the library for the taking of testimony in order that access might be had to the model?

A. I knowed nothing about it. I believe my opponents had the model in their possession without the permission of the Commissioner or any one; furthermore, the examiner, M'r Gregory, kept out of my way for two days to avoid a subpœna; and if M'r Dean, counsel for respondent, had not wanted him for cross-examination, also to make him his own witness, I do not believe I could have found him.

Cross 191. Do you mean to testify under oath that you were not informed that the Commissioner had consented to the use of the library in the taking of testimony that the models might be used?

497 A. I do testify under oath, and will repeat it a thousand times if necessary, the only thing I heard about it was in an indirect manner hearing others talk, but their conversation was not directed to me. I think I heard M'r Dean say during the day that the Commissioner had granted the use of the library for taking testimony in, but as for getting at the models the question put by counsel is the first I've heard about it. Furthermore, I suppose the respondents wouldn't think it would look well for them to use the models in any other place but the Patent Office first. Had they done so the enquiry would have been how they got them out of the office when no other parties could find them in the office; that is, all but Enoch Thomas' genuine model.

Cross 192. Do you mean to say that the decay of the rubber in one of the Sawyer samples was owing to the manner in which it was woven?

A. I do, it being more exposed to the air; as I see no other reason why it should not be equally as good as in the other two samples.

Cross 193. Were you ever engaged in weaving or in carrying on business in any place in England other than those stated by you in your direct testimony?

A. I made a tramp through England and Wales one time to learn all I could, and see all I could. Carried along with me my fiddle and flute. Sometimes I used to weave, sometime I used to fiddle. I used to get into weaving places where they were making different kinds of goods, and look around me; if I saw anything which I did not already know

both in theory or practice, I used to stay, trying to get employment; if I could not do so I used to either hang around the place for a few weeks or travel on to some other place where such kind of goods were manufactured, and try my luck there. I have not manufactured in any other places than before mentioned to any great extent—that is, in England.

Cross 194. Did you ever weave in Leicester?

A. I never did. At the time mentioned in Leicester there was
498 very little weaving done; it was long prior and before the Turners went to Leicester as on the tramp, as journeymen weavers, and long prior to Mess'rs Hodges & Sons.

Cross 195. Did you make the elastic web with both weft threads passing around each outer selvage cord with a standing warp under your patent, division A?

A. I made my web under division A, according to the specifications therein.

(Witness asks counsel to explain his question.)

Cross 196. In using a standing warp and two weft threads did both weft t'reads pass around the outer elastic cords?

A. Sometimes did and sometimes did not.

Cross 197. Could they be made equally well in both ways?

A. Where things are nicely and correctly adjusted there would be no difficulty; it required a good experienced weaver to make the goods, particularly the selvage.

Cross 198. Of the Union goods made and sold by you did the two weft threads pass around the outer selvage cord in the larger or lesser proportion of them?

A. I would say the lesser; I had braiding machines built to braid the edge rubber cord with a little fine silk, or a little fine single black cotton. When I had those cords in the goods braided I never passed the cotton round the edge cord thread, and I might have neglected doing so even when it was not braided.

Cross 199. In seeking the reissue of your patent did you seek to cover as your invention the process of making single as well as Union web?

A. I did not; but when I was trying to make arrangements with Judson in 1849, and Dodd & Wakeman, and other parties, the single web was all I exhibited or showed; that is, I did not seek to reach it in my reissues, as I always thought I had it in my patent, and was so informed by my solicitor. I did seek to recover it when I was informed my patent was defective, but always thought before that my original patent covered the fabric.

499 Cross 200. Did you, in your division B, seek to cover single as well as the Union fabric?

A. According to my understanding division B does not cover the Union fabric. As I understand the question put by counsel he asks me if I meant to cover in division B Union as well as single or one-shuttle goods, but I do not always understand by the terms he uses what he means; but what I understand by division B is, that it covers all kinds of goods made according to my specification and claim, whether they were made in a loom or not; that single or double shuttle has nothing to do with division B.

Cross 201. Was it your object in obtaining said division B to cover single and double shuttle goods alike?

(Objected to as incompetent and immaterial.)

A. My object in obtaining my division B was to remedy the defects and errors in my specification and claim in my first patent, and to

secure my right, which I had always thought was secured, in my first patent.

Cros 202. Question repeated.

A. My object was to secure what I intended to cover, and thought I had covered, in my first patent.

Cross 203. Question repeated.

(Objection repeated.)

A. My answer was to secure what I intended to cover, and thought I had covered, in my first patent.

Cross 204. Did you seek by said division to cover all elastic webs wherein the rubber cords were covered at top and bottom by the weft threads only, whether single or double shuttle goods?

(Same objection as to cross 201.)

A. I sought to cover all elastic webs that were made pursuant
500 to my specification and claim in division B. I think I do. According to my understanding I sought to cover all elastic goods made as I have before stated all through my cross-examination.

Cross 205. Question and objection repeated.

A. I do not wish to undertake to determine and say what my intentions were when the matter is at issue in the courts; and I do not think it proper for counsel to press my opinion on the matter, but if counsel insists upon an answer I shall defer it until I have consulted with all my counsel, or until ordered to answer by the court.

Cross 206. Did you just now say to me while the commissioner was writing your last answer, "I am not going to be caught that way, M'r Dean, and it will take a sharper man than you to catch me"?

(Objected to as immaterial and impertinent.)

A. I did say so, knowing that the whole tendency of his cross examination of me has not been on the subject-matter of this suit against the Glendale Company. The multiplicity of his questions in my cross-examination has been to procrastinate time, and to get me to make some little errors in my replies to use against me in other suits.

Cross 207. The question I ask relates to your own intentions in seeking the reissue of your patent in three divisions, and is not one requiring the aid of counsel to answer. It is not as to the construction of your patent, but as to your object and intention. Please state whether in surrendering your patent, and seeking its reissue in three parts, your object and purpose was to cover by the reissue any elastic fabric wherein the rubber cords were covered at top and bottom by the weft threads only, regardless of the question whether made with one or two shuttles.

(Objected to as immaterial and incompetent.)

A. The object of the reissue of my patent in three parts was to
501 cover all my rights, which I thought I had covered in my first patent, whatever those rights may be; whether I have done so or not I leave it for the courts to decide.

Cross 208. Do you decline to say whether you intended to cover by said reissue the fabric described in last interrogatory?

(Same objection repeated.)

A. I do not decline to answer or say anything that is proper for me to do so; but I do decline to put a construction on my claims while they are in abeyance in the court, without an order from the court.

Cross 209. Do you decline to testify as to your intentions in seeking said reissue?

A. I am surprised at counsel putting such a question to me again when I have answered it over and over again.

Cross 210. Will you describe the fabric intended to be covered by said reissue?

A. I have described it so many times in my cross examination that I think it frivolous to repeat it.

Cross 211. Please describe it now.

(Witness desires to be told if the counsel for respondent will be satisfied with one additional description.)

Cross 212. All I ask is one exact description of the fabric that complainant sought to cover by his reissue in three parts.

(Objected to as immaterial and incompetent.)

A. I sought to cover a fabric, according to my ideas of it, where the weft threads were compressed upon elastic cords by interlocking warp threads with the weft threads, and the weft threads being pressed partly around the elastic cord; that is my own private opinion; I don't
502 give it as a judge, or a counsellor, or a lawyer; I may be wrong in my ideas, and hold myself to be corrected either by myself or others by further information and knowledge of the matter. I consider, further, as I have before stated, that it applies to all goods made according to my specification and claim in division B.

Cross 213. Please state whether your intention was to cover single and double shuttle goods.

(Objection repeated.)

A. I have before stated, time after time—and I am sick and tired of it—that I cannot answer more definite than I have repeatedly done.

Cross 214. Cannot you say "yes" or "no" to the question last put?

(Same objection.)

A. I can't give any other answer than I have already done. If the counsel will go and explain his question to the court, and the court orders me to answer, I will do so.

Adjourned until further notice.

DECEMBER 13TH, 1869—1.30 p. m.

Present, counsel for both parties.

Witness objects to resumption of the cross-examination until a week from to-morrow, the 21st Dec., 1869, stating that he has received no notice, and considers that the cross-examination is prolonged simply to prevent him from taking testimony in his own behalf in other suits.
503 Benj. Dean, esq., counsel for the defendant, states that all parties having been present for an hour and a half, in presence of the examiner, he insists on having the cross-examination proceed, unless a more reasonable time is fixed for its resumption, he being in the city to attend to this business.

Adjourned till Thursday, Dec. 16th, 1869, at 10 a. m.

THURSDAY, *Dec. 16th*, 1869—10 a. m.

Present, counsel for both parties.

Cross-examination of William Smith resumed.

The complainant, William Smith, here puts in evidence the letter (marked Complainant's Exhibit A A A), of which a copy is annexed:

COMPLAINANT'S EXHIBIT A A A.

Copy of letter.—K. G. W., Ex'r.

BOSTON, 24 *Aug.*, 1868.

M'r W'M SMITH, 80 *Cliff Street, New York:*

DEAR SIR: I have your favor of 22d, handing me a document, which will have my attention, and for which I thank you.

Truly, your obed't serv't,

J. T. LOVERING.

504 I also thank you for the suggestions you make as to the manner of making union or all silk web. I will talk it over with M'r Sawyer, whom I expect to see to-morrow.

Cross 214*a*. In your answer to cross-interrogatory 205, you state that you wish to consult with all your counsel before answering as to your intentions in obtaining the reissue of your patents. Are you ready now to give the information desired?

A. My counsel advises me that I have already fully answered the question, and I repeat my former answers.

Cross 215. Do you decline to tell what your intentions were?

(Objected to as immaterial.)

A. Witness is surprised at counsel putting such a question, when he has already so often answered it during his cross-examination, and he has no further answer to make to it.

Cross 216. Have you, in your cross-examination, told what you intended to secure by your reissue, except by reference to your specifications and claims in the patents?

(Same objection.)

A. Witness can't understand the meaning of counsel about intentions, but this I know, concerning my own intentions, was to secure all my equitable and legal rights which were due to me.

Cross 217. What were those rights, as you understood them?

(Objection repeated.)

A. Witness declines to put any legal construction to my finite understanding, and leaves it to the courts to say to define my rights.

505 Cross 218. Did you ever know what your invention was?

(Same objection, and also objected to as likely to mislead the witness, unless counsel explains what he means by invention.)

A. It seems to me that the opposition won't let me form an opinion.

Cross 219. Question and objection repeated.

A. If I must give an opinion of my own, independent of all surrounding circumstances which are existing at this time, my invention was according to my present specifications and claims in my existing patents.

Cross 220. Were you first inventor of the single web hereinbefore described?

(Objection repeated.)

A. Witness asks for description of that web.

Cross 221. A web woven with one shuttle in which the rubber warps are covered with the weft thread only, the weft threads being held against the rubber warps by binding warps between the rubber warps.

(Objection continued.)

A. Witness replies that counsel is traveling over the same ground that he has been over for several days, and the same question has been

answered a great many times; I again repeat it, that the witness claims a web made with a single shuttle, according to my specification and claim in division B, whether it was made in a loom or in any other manner whatever.

Cross 222. In the web invented by you, and sought to be covered by your patent, was the outer selvage cord an elastic cord?

(Same objection.)

506 A In my first issue of patent I claimed both non-elastic and elastic; in my division B, in my last reissued patents, the Patent Office confined my claim to elastic cords; whether it is so with divisions A and C of my patents I cannot at present say without examining them again.

Cross 223. In the elastic fabric invented by you, and sought to be covered by your patent, was the selvage cord one of the elastic cords?

(Objection continued.)

A. What remained permanent in the fabric was so.

Cross 224. What was it that did not remain permanent in the fabric?

(Objection continued.)

A. Sometimes there was nothing that did not remain permanent in the fabric, other times there was white horse-hair that did not remain permanent in the fabric, other times a wire, other times whalebone, which I used, chiefly prepared for milliners in the making of what they called shirred bonnets. These things were used to allow freedom for the selvage cord to contract. When none of these things were used as before mentioned, two or three dents on the outside of the reed were made very strong and a little farther apart than the rest of the dents of the reed, so that the reed would not contract when the lathe brought the reed close to the fabric, while the interlocking warp threads interlocked with the weft threads; things which must be well known, and is known by every workman of such fabrics.

Cross 225. In making single elastic web, did the rubber cords or warp rise and fall, as the others did, to form the shed?

A. They can be made either way, either with a standing warp or a movable warp.

Cross 226. Did you ever know them to be made with a standing warp?

507 A. I never knew them personally, but from my knowledge of the art I know as well it can be done so as if I had practiced it all my life; further, that E. T. Sawyer, of the Glendale Company, told me that they had tried one loom on that principle but discontinued it.

Cross 227. In making the union web did the outer elastic cords of the warp rise and fall with the fibrous warp, while the central elastic cords remained stationary?

A. Partially so, the two outside cords of the fabric, but not exactly so; in my practice, or at least some part of my practice, I used to raise the two outer cords of the fabric sooner than the interlocking warps, and not raise the shed so high, and found in practice that the stationary elastic cords and the two outside rising elastic cords worked better in the front of the heddles than when in the middle of the heddles or the back of them, particularly so when making fine fabrics.

Cross 228. How could you distinguish the Glendale goods from others in the market?

A. I have seen Glendale goods in the market; I saw them (I am speaking now of union goods and all silk goods) also making them in their factory in August, 1868; by the manner the looms were fitted up, also the manner that the non-elastic warps was put in, also the manner the

elastic warps was fitted up, that the non-elastic warps, the weaver would clear up his pieces of cumber boards (boards with holes in them), the non-elastic warps would work into the fabric, some parts of it very tight, some parts slack, which would cause a striped appearance in the fabric when held up in front of one, with one's back to the light, and looking along the fabric longitudinally; also, regarding the elastic warps, some threads would be stretched out to its possible tension, while other threads of elastic cords would work in the fabric with somewhat less tension upon them.

Cross 229. So that when you saw a piece of all silk or union web, wherein some of the cords contracted more than others, or having in the fabric a greater tension than others, giving the fabric the ap-
508 pearance you have described in your last answer, you would conclude that fabric made by the Glendale Company?

A. In my last answer I have made no mention about the contraction of the elastic cord; I have been shown such goods as before described in the market, and been asked the reason of such appearance in the goods as before described; I have answered it was through the manner such goods were made, but did not think that it would be of much damage to the durability of the goods, only that it was very objectionable in the sale of them; they said the goods were bought from the Glendale Manuf'g Co., in East Hampton; they also said that they wished they were without them, they had so much trouble with them, and being offered remuneration if I could get offers for them, or something to that effect; and when I was in the Glendale factory, and saw them making such goods, I knowed the result in the fabric would be the striped appearance as before described.

Cross 230. Would not that be the case with web made by any manufacturer where some parts of the elastic warp were woven under greater tension than others?

A. It is the object of all manufacturers to cause an equal tension on all the elastic cords, also to stretch all the elastic cords out to their uttermost tension; but when the elastic threads are cut from sheets of rubber improperly vulcanized, there will be some parts of those elastic threads that will not stretch out as far as the other part; and those parts of the threads which would not so stretch out, would almost certainly break in the weaving of them; and when I was in the Glendale factory as aforesaid, E. T. Sawyer went to one of the rubber warps, put his hand into it, and raised it up and down; I also noticed a let-off motion to the beam of the rubber warp, and suppose that that fixture of the let-off motion to the rubber warp that the rubber cords would not have strength in themselves to pull the rubber warp beam around properly weighted without the let off motion. In answer to the other part of question, I have seen in other manufactories in odd places in
509 the fabrics, for a few inches, similar defects, but never have seen it so universal through the whole of the fabric as I have seen in the goods said to be made by the Glendale Elastic Fabric Company.

Cross 231. You have said that you have made all silk web with a single shuttle, and also with two shuttles; could you tell them apart, and how?

A. I could, the way that I made them; I said in my former answers that I sometimes braided the edge cord with a single strand of fine cotton or silk, and then I only brought the strand from one shuttle around the two selvage elastic cords; at other times, when working with two shuttles, I might, and most probably did so, when the two cords were not braided, bring both the weft threads from the two shuttles around

the selvage cords; and I have also done so when making union goods, when one weft thread being a cotton strand and the other weft thread being of silk, but have only done so when the cotton weft was very fine and the silk weft would partially cover the cotton weft around the selvage cords.

Cross 232. Was there any other way of distinguishing the all silk web made by one weft and the all silk web made by two shuttles, except by the selvages?

A. There was no substantial difference, but where it was made by one shuttle, and the India rubber rose and fell, the ribbed part of the surface would appear a little more raised than when made with a standing warp, and goods made different from the construction of my specification and claim in Division B of my patents, also in A C, would have a greater contrast between them.

Cross 233. Do you mean that there was a contrast between goods made under your patent division B and goods made under your patents division A and C, in respect to the ribbed part of the surface?

A. As I have before stated, there was no substantial difference, and if the interlocking warps and weft threads were made of strong silk that would bear a greater tension upon them, the weft threads would
510 clip so tightly upon and around the elastic cords that the rubber threads would imbed itself little if any in the weft; I do not think there would be any difference, or but little, between goods made with a double or a single shuttle, or between goods made with a standing warp or a rising and falling warp.

Cross 234. Could they be distinguished apart except by the selvages?

A. It is hard for me to answer such a question, for this reason, that parties may go and make specimens of such goods, and if I answer one way they will answer another way, whichever way it might be; I will leave the goods to speak for themselves.

Cross 235. Is there any certain way of telling the goods apart? If yes, what is it?

A. The goods made pursuant to the construction of my patents there is no substantial difference between them, and it is immaterial whether they can be distinguished or not.

Cross 236. Is there any way of distinguishing with certainty, all silk web made with one shuttle from all silk web made with two shuttles, and all cotton web made with one shuttle from all cotton web made with two shuttles, except by the selvages?

A. If the two shuttle webs are thrown through the shed together and made according to the construction of my patents, it would be somewhat difficult to distinguish them, but it could be easily distinguished whether they were woven with two shuttles or one; when made with two shuttles, and the weft in the shuttles being of the same material, the weft thread in one shuttle would be sometimes drawn a little tighter around the selvage cord than the other, and vice versa, when the shuttles went in opposite directions; by dissecting the fabric and opening the interlocking warp, it would be seen that one weft thread went across in one direction in the open shed, and the other weft thread went through the same opening in an opposite direction; there is no difficulty in telling whether the fabric is made with one or two shuttles.

511 Cross 237. Apart from an examination of the selvages?

A. Yes.

Cross 238. In your answer to cross 164 you say, "I made some fab

rics with a cotton weft running at right angles with the rubber cords, with additional cotton warp running longitudinally with the rubber cords on the back of the fabric, under divisions of my patent A and C." Describe the position and the office of said additional cotton warp.

A. The cotton warp was made generally of white cotton, and was confined to the back part of the fabric only.

Cross 239. Was said additional cotton warp between the rubber cords only, or also on the back of the cords?

A. It was interlocked only between the rubber cords, for the warp threads were put in in such a manner that they spread over the whole surface; sometimes it was plain cloth and sometimes a twill on the back part of the fabric.

Cross 240. Was the piece of fabric shown by you to Mess'rs Dodd & Wakeman a sample about the size and shape of a shoe gore?

A. It was not; if I showed them any, of doing which I've no distinct recollection; the small sample that I made in 1849 was a plain straight piece of webbing about four inches wide, and my engagement with Dodd & Wakeman was to make fine suspender webbing like the French. I told them I intended to get out a patent for making elastic goring web, but ultimately found they had no proper materials for making fine suspender web or elastic web, nor proper power or funds to pay the hands with which I employed; and they raised a question that in the agreement that they only agreed to find proper room and power, and purchase such material as was requisite to make the goods, and not to find funds to pay the workmen; that for several weeks the hands that I employed, also that they employed in their own part of the business, could get no money, and one Saturday, in the afternoon, I pawned my watch to raise a little money, and I distributed it amongst my hands as far as it would go; they, Dodd & Wakeman, paid, or engaged to pay,
512 my board at a house in the neighborhood, three dollars a week; I wanted for several weeks to get down to New York to remedy this state of things, and could not raise money enough to pay my fare to New York.

Cross 241. Was your agreement with Dodd & Wakeman in writing? If so, will you please produce it?

A. The agreement was in writing, and I sent to have a copy made the same time it, the agreement, was made, but looked for it in the last few days, and could not lay my hands on it. I have in an amended answer to my complaint in the court of common pleas in this city a true and exact copy of the original, which I am willing to read in evidence.

Cross 242. Who made that copy?

A. I believe it was made in the office of P. Y. Cutler. And there is no doubt but what it was made from the copy I had made (at the time the original was made) to keep in my possession.

Cross 243. Did you ever compare that which you now offer with the original?

A. If I recollect aright, I was by him at No. 8 or 10 Wall street, in this city, when those that made it compared it with the original.

Cross 244. How came you by that answer to your complaint?

A. I think I procured it a few months ago, a week or two before Cutler's death, from his office in Wall street, hunting up all the old papers I could collect, in chance they might be wanted.

Cross 245. Is the copy that you tender to read found in a copy of the pleadings in a suit of yourself against Bethuel Dodd and John P. Wakeman in the court of common pleas, for the city and county of New York?

A. To the best of my belief it is, that my counsel would never make out a copy of pleadings to argue and did argue before the court that was not correct, particularly so a copy of an agreement between Dodd & Wakeman, as that was the foundation of the suit upon which all the argument in the case rested, and any incorrectness in the copy of the agreement would have been detected and exposed by the counsel for the defendants.

513 Cross 246. Did you sign and swear to the complaint a copy of which you have in your hands, and which is referred to?

A. I signed it, but at this time cannot swear whether I then swore to it; but I did sign such agreement as I now hold in my hand, as referred to, and I am willing to swear that it is a true and exact copy of the original.

Cross 247. Will you produce said copy of the pleadings, including said copy of the agreement?

A. I am not willing to produce a copy of the pleadings, but I am willing to produce a copy of the agreement.

Cross 248. Does it not appear by said copy of pleadings that you swore to said complaint?

A. I have never looked at them to read them over since they were made until now, no further than the agreement; but by looking them over now I find I did swear to it on the 11th day of June, 1851, before John D. Hoyt, commissioner of deeds.

Cross 249. What was the object of said complaint?

A. I think it was for breach of the contract referred to. I am not sure. At that time I knew very little about law.

Cross 250. Did you not in said complaint allege that you had produced goods in accordance with said contract?

A. I cannot recollect what I alleged in that complaint, for I have never seen it from that day to this. I gave my lawyers the contract and they made out a bill of complaint, the contents of which I disremember.

Cross 251. Please read the copy of said complaint which you now have here in your possession, and then say whether you did not therein allege that you had produced goods in accordance with said contract?

A. I will produce a copy of the pleadings, consisting of the complaint, answer, and replication, the copy of agreement making a part of the complaint.

(Witness puts in evidence complainant's Exhibit B. B., K. G. W., ex'r.)

Cross 252. Did you ever see the Younge model in the hands or presence of any of defendants' counsel?

(Objected to as immaterial.)

514 A. I never did.

Cross 253. Did you ever see it in the hands or presence of M'r Beadle?

A. I never did; but I've seen it in the hands of M'r Gregory, the examiner, who first produced it, to my knowledge, when I asked him about it a little while ago, in Washington.

(Counsel here objects to any conversation with M'r Gregory, for he has not asked for it. Witness insists upon continuing.)

When he replied to me he told me that if I would enquire of the proper parties for it I could find it. When enquired who those parties were, he mentioned several names, of some of whom I had enquired to produce the said model.

Cross 254. How long did you have a place of business in London, and was that your last place of business before coming to this country?

A. I never had a place of my own in London, but only employed an agent, and that was some time before I came to this country. The last place of business I had before coming to this country was in Glasgow, Scotland.

Cross 255. How long, and between what dates, did you have an agent in London?

A. I can't state the exact time of commencement, but I think it terminated in 1843. My place of business during that period was in Manchester, England.

Cross 256. What man did you refer to when you just now said "you need not produce that man's testimony, for I'll knock it all to pieces"?

A. I did not say anything of the kind.

Cross 257. What did you say?

A. I said you need not fish to try to establish that lying man's testimony (Creighton, I meant him), that I should knock his testimony to pieces.

Cross 258. How often were you in London during the existence of your agency there?

A. I can't say. I never kept a record.

Cross 259. About how often?

515 A. I've said all I know about it, and have no other answer to make.

Cross 260. How long was your place of business in Manchester, England, and between what dates?

A. I don't recollect exactly the year I first went there, but I continued there until the spring of 1844, I think.

Cross 261. What was the name of your agent in London?

A. I do not remember the name, as I have before stated.

Cross 262. How long was he your agent?

A. That I can't state, as I don't recollect when he commenced. I think but a few years.

Cross 263. About how many years?

A. It might be three years. I know I employed him to ease me of some labors in London.

Cross 264. Was he your agent to sell your goods in London while you were in Manchester?

A. Only partially so. I took orders and sold goods myself while in London, and orders came direct by mail to me in Manchester, which goods I sent direct from Manchester to the parties ordering them.

Cross 265. Did your said agent occupy the place of business opposite the great P. O. lamp you have described?

A. He did.

Cross 266. Do you mean to say, on reflection, that you cannot tell the name of the man who for some years occupied that business connection with you?

A. I do mean to say so. Several years ago I wished to write to him to make some enquiries of him concerning matters in London, and I then could not recollect the name, and cannot do so now.

Cross 267. How long were you in business at Glasgow, and what was it?

A. I was in business there about twelve months. I had a double store in Glasgow, in which I kept dry goods, suspenders amongst the rest, and on the other side I kept fine groceries, and was agent for the London and East Indies Tea Company.

Cross 268. About how many years was your place of business in Manchester?

516 A. It might be ten years; perhaps a little more.

Adjourned till Friday, Dec. 17th, 1869, at 10 a. m.

NEW YORK, *Friday, Dec. 17th*, 1869—10 a. m.

Present, counsel as before.

Cross-examination of M'r Smith continued

Cross 269. Who was your landlord in London of the place opposite the great lamps?

(Objected to as immaterial.)

A. I never had any.

Cross 270. Was your agent the occupant and lessee of the place?

A. He was the occupant, but whether he was the lessee I cannot say. He was a widower, with two young ladies represented to be daughters of his, and lived in the upper part of the building, above the store.

Cross 271. What was his business besides being your agent?

A. If I recollect it was buying and selling general assortments of dry goods and small wares, and I think also a commission business, but I won't speak positively on that point. I employed him as my agent chiefly to ease myself of small matters and have a place where wholesale purchasers could run to for small daily wants.

Cross 272. How many places of business did you occupy while in Manchester?

A. I cannot exactly say.

Cross 273. What place did you occupy the longest?

A. I think I occupied the longest in Church street, next door to the Red Lion, as a warehouse.

Cross 274. How long did you occupy that place?

A. That I can't pretend to say, such a question being instantaneously put to me. If it were asked to me later I might tell. I can't recollect now the name of the landlord of that place, or the landlord of the factory that I had. I can't even think of the name of the street where my factory was.

Cross 275. How long did you occupy your factory?

517 A. Several years; when I first began to drive my works by steam power. Prior to that I had my factory in Salford, adjoining Manchester, and carried on my works by hand. Some portion also I carried on by hand while carrying on my works by steam-power in Manchester.

Cross 276. Did you hire your power of the same person as you hired the factory of?

A. I did. As far as my recollection goes now, I had a ten-horse power.

Cross 277. What amount of rent did you pay?

A. I can't recollect, having no memoranda to refer to.

Cross 278. What was the rent of your warehouse on Church street?

A. I can't recollect. I haven't a scrap of paper about me in this country in regard to any of these circumstances. I recollect the rent of the dwelling-houses I occupied. I had one house in a little, short street, called James street, I think; the rent of that house, containing 17 rooms, was £25 a year, besides all the rates and taxes, which would amount to more than 50 per cent. additional. The other house was in Broughton, in Salford, cottage and garden, which, to the best of my recollection, was £16 per year, free of all rates and taxes.

Cross 279. How long did you occupy those houses?

A. I can't say.

Cross 280. Did you occupy either of them as long as your factory?

A. I didn't occupy them as long, I think, but I am speaking from a dim recollection.

Cross 281. Can you not say about how long you occupied the warehouse on Church street, next to the Red Lion?

A. I have already given in evidence all that I at present recollect about them, and have nothing further to add.

Cross 282. Did you have any other warehouse in Manchester?

A. I had not.

Cross 283. Did you occupy that warehouse up to the time you left Manchester for Glasgow?

518 A. Within a few weeks of that time.

Cross 284. How large was said warehouse occupied by you?

A. I never measured it.

Cross 285. How many rooms?

A. There were two, one in front and one at back. My impression is that the rooms of the Red Lion ran over my store, but I do not distinctly recollect.

Cross 286. Did you have any partner in your business in Manchester or Glasgow?

A. In Glasgow I had none; in Manchester I had a partner for about twelve months before I left there.

Cross 287. Who was he, and where is he?

A. His name was Lambert; where he is I don't know.

Cross 288. What was his first name?

A. I think it was John, but will not be quite certain.

Cross 289. Of which place was your rent the largest, factory, warehouse, or dwelling-house?

A. Of course, the factory would be.

Cross 290. Do you remember any other persons than those you have already mentioned to whom you sold elastic webbing for shoe-gores in the first year or two when you sold any?

A. I don't quite recollect all the persons I have mentioned, nor can I recollect all the persons I sold to, as I sold net cash, without discount, and kept no books, and my sales were very small the first year or two I began.

Cross 291. In your answer to cross 121, you said you saw a certain man in this very room and spoke to him a few weeks ago; was that man Thomas Creighton?

A. I don't know what his first name was, but it is the same man I saw at the examination at Gifford's. The conversation aforesaid that I had with him about my patents was in the summer of 1851, when he resided at 37 Atlantic street, Brooklyn, and nearer to the ferry than Geo. T. Whitehouse.

Adjourned till Dec. 20th, 1869.

NEW YORK, *Dec. 20th*, 1869—10 a. m.

519 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

520 *Deposition of Charles C. Nichols, taken, subscribed, and sworn to before N. Austin Parks, examiner, December* 21, 1869.

I, N. Austin Parks, a notary public, duly authorized, admitted, and sworn, within and for the county of Suffolk, in the Commonwealth of

Massachusetts, in the United States of America, residing and practising in Boston, in said county, do certify that on the twenty-first day of December, A. D. 1869, I caused to appear before me Charles C. Nichols, a witness on behalf of the complainant in the above-entitled case; and that he, having been duly sworn to testify the whole truth, and nothing but the truth, relating to the matters at issue in the same, his several answers to the interrogatories propounded to him were by me reduced to writing in his presence, and by him subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

In testimony whereof I, the said notary, have hereunto subscribed my name and affixed my notarial seal of office this 21st day of December, A. D. 1869.

Attest:

[L. S.] N. AUSTIN PARKS,
Examiner and Notary Public, County of Suffolk.

DECEMBER 21, 1869.

CHA'S C. NICHOLS, recalled by complainant, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by William Smith, complainant, as follows, viz:

1. Q. Have you been before examined as a witness in these cases?

A. I have.

2. Look at Exhibit C C C, marked Julius Hotchkiss, Water-
521 bury, Conn., and say if it resembles the goods formerly known in the market as the 48 suspenders, and sold and made by the Russell Manufacturing Company and others.

A. It is very much like it, excepting that it is wider and heavier.

3. Q. Did you purchase similar goods with the cockly appearance of the Russell Manufacturing Company?

A. I purchased similar goods with their names on the boxes, and I suppose made by them.

4. Q. Can you recollect the different numbers designated by the Russell Manufacturing Company, with the same cockly appearance in the webbing? If so, please state the numbers you recollect that they were known by.

A. I have bought 52, and I think 35, and some others besides the 48.

5. Q. Were these different numbers intended to distinguish the styles of trimming of the suspenders, and, if so, would they not be recognized in the market as the 48 suspenders, with a different style of trimming to the 48 proper?

A. I should think they would.

6. Q. Were many of these 48 goods sold in the market? Were they or not a leading article in the market, and how late a period can you recollect those goods being in the market?

A. They were a leading style, and many were sold; I should think none of any account had been sold for the past twelve years.

7. Q. What is the earliest period that you recollect them in the market?

A. I should think more than 20 years ago.

And in answer to cross-interrogatories by Benj. Dean, esq., deponent saith:

Cross 1. Did you deal in both imported and domestic-made suspenders?

A. I did, but most largely in domestic.

522 Cross 2. By whom were the domestic suspenders made?

A. I think by Hotchkiss, Merriman & Co., the Russell Manufacturing Co., Warren, Newton & Co., and Horace Day; I don't recollect the names of others.

Cross 3. Was not the difference between Day's goods and the others that Day's were the shirred goods and the others woven?

A. Apparently it was; I understood Day's goods to be two pieces of cloth cemented together with rubber between.

Cross 4. How many kinds of woven suspender webbing were there in the market about that time?

A. I could not tell; there were several kinds.

Cross 5. Were not the 48 suspenders of those days very much thinner and more slazy in appearance than the Exhibit C C C?

A. I should say they were not as heavy nor as wide; they were about the same nature of webbing.

Cross 6. When stitched could you see through them?

A. You could see through them and count the strands of rubber.

Cross 7. Could you see the strands of rubber between the filling threads?

A. You could when stretched.

Cross 8. Were not the rubber strands much smaller than those in Exhibit C C C?

A. I should say they were.

Cross 9. Were the rubber cords covered at top and bottom by the filling threads only, as in said sample C C C?

A. I couldn't say; I should think they were.

Cross 10. Can you remember whether the cockly appearance in said old 48 suspender was caused by the puckering or corrugating of the cloth between the rubber strands, as in said sample C C C., or by the uneven contraction of the rubber strands, causing the suspenders to pucker or cockle in spots or places—to lay uneven in the boxes, and to hang unevenly when suspended?

523 (Objected to, as the counsel does not understand the question that he is putting; and further, that an expert could not answer the question in the manner in which he has put it, and that the question itself is full of contradictions and inconsistencies.)

A. I am not able to state the cause of the cockling; I am not an expert in manufactures.

Cross 11. Look at the paper now shown you and state whether it is not your former deposition taken with reference to this subject-matter, and state whether you did not, in your answer to the third interrogatory, say, with reference to said 48 suspender webbing, "the web was slazy, very loose in texture, and didn't lie smooth in the box, and sometimes the suspenders would curl around, and when taken out of the boxes they wouldn't hang straight."

(Objected to, as witness has stated nothing inconsistent in his present deposition to his former one, as mentioned by the counsel.)

A. That is my deposition and that is my answer.

Cross 12. In making said answer, did you not endeavor to describe said suspender webbing accurately, and to point out the respects in which it differed from other samples of webbing then shown to you as exhibit?

(Objected to, as said answer only contains a part of his description of the 48 suspenders, and desiring that the whole evidence on that point be given as a whole.)

A. I was at that time only describing the 48 suspender; the exhibit had not been shown to me.

Cross 13. Did you describe the 48 suspender accurately?

A. To the best of my recollection.

524 Cross 14. Was the puckery appearance of the old 48 suspender web regular and alike throughout the entire fabric, like Exhibit C C C, shown you, or did it occur at irregular spots or intervals, causing it at times to be twisted out of shape?

A. It was not regular throughout; in every pair of suspenders it wouldn't be cockly, like C C C, but in every dozen some would be so more or less; this C C C seems to be made on purpose to procure the cockly appearance; this is not a 48 suspender; this is made so on purpose; that was not, in my opinion.

Cross 15. Did not the appearance of the old 48 suspender give you the impression that the cockly or irregular surface of the web was because of the uneven elasticity of the rubber used, and that the manufacturers had not succeeded in avoiding it?

(Objected to, for the reason that witness is not an expert in weaving, and for the reason that all goods with the rubber so far apart as in the 48's described, having elasticity in them two to one (as all the different witnesses have stated about the 48's), must inevitably have a cockly appearance, and also asking of the witness a question which none but an expert is competent to answer.)

A. At the time I never investigated nor thought of any reason for the difference.

Cross 16. Did it not strike your mind as an imperfection that the manufacturers had not succeeded in overcoming?

(Objected to, as witness has already said that he has never investigated nor thought about it.)

A. I never thought of it.

Cross 17. Was there as large a space of cloth between the rubber strands in the 48 suspenders as in Exhibit C C C?

A. The 48 being narrower, the space would not of course be so great; I don't recollect distinctly so as to answer that.

525 Cross 18. Did not the rubber strands occur at regular intervals, and were they not equally distant from each other?

A. I could not answer distinctly. I could only guess at it.

Cross 19. Did the places where the rubber strands were project above the balance of the fabric as in C C C?

A. Very little; of course a cord the natural size of the rubber would make it a little higher, but not a cord like this; it wasn't filled in with this cockle between every two strands of rubber as this is; it seemed smoother.

Cross 20. In the old 48 suspender web, where the cockled or uneven surface appeared, did not the unevenness embrace or include the rubber strands as well as the other material of the fabric?

(Objected to as of such a nature that an expert cannot answer it, and if it were answered according to the question the goods could have no marketable value, as the rubber threads would come through the web in loops.)

A. I could not answer.

Cross 21. Where are your books of twenty years ago?

A. Some sent to the paper-mill and some burnt in '58.

And in answer to direct interrogatories resumed de bene esse, deponent saith:

8. Q. In the old 48 suspenders, when you stretched them out lengthwise, did you notice straggling warp-threads lying on top of the rubber, in the same direction as the rubber, like a coarse net-work?

(Objected to as leading.)

A. I cannot state positively; my impression is that there were such threads.

526 9. Q. You said in your cross-examination that the cockly appearance was not regular through the fabric of the web C C C; when it was not so regular, would not irregularity make its appearance again in other parts of the web between the same two rubber threads?

(Objected to as leading.)

A. I could not say distinctly.

10. Q. Not having seen the old 48 web for so many years, did not Exhibit C C C recall to your mind what they were?

(Objected to as leading.)

A. No, sir.

11. Q. In the old 48 suspender webbing made by the Russell Manufacturing Company, the more you pulled and stretched it out wouldn't it the more twist and turn round, something like a bull-frog's leg?

A. I couldn't answer.

12. Q. By stretching them out and letting them contract would it not have the effect of making them hang more crooked?

A. I should answer that as before, that I did not investigate the matter at the time.

(Objected to.)

13. Q. Had not the old 48 suspender, sold in the market, as before testified to, a cockly, uneven appearance?

A. I should say they had, such as I have before testified to in this and my former deposition.

And in answer to cross-interrogatories resumed, deponent saith as follows:

Cross 22. Do you not remember as a fact any instance in which the 48 suspenders had any fibrous warp threads except between the rubber strands?

527 (Objected to as already answered.)

A. My impression is that there was a warp under and over the strands of rubber.

Cross 23. Is there in Exhibit C C C?

A. I should say not, sir.

Cross 24. How was it with regard to the other suspenders sold by you twenty years ago?

(Objected to as immaterial and as already answered.)

A. I do not know.

Cross 25. Do you remember any instance in which your attention was called to the relative positions of warp and filling in the old 48 suspenders?

A. No, sir; I don't know that my attention was ever called to it.

Cross 26. Did you ever examine these relative positions?

A. I probably did at the time, but not enough to go into a detailed account of the warp and filling.

Cross 27. When stretched, could the rubber threads be distinctly seen?

(Objected to as already answered.)

A. They could.

Cross 28. Could they be distinctly seen on each side of the fabric when stretched?

A. I should say that they could, to my best recollection.

Cross 29. Was there any difference between the two sides of the fabrics in any respect?

A. If so, I cannot describe it.

Cross 30. Look at Exhibit No. 4, N. A. P., Ex'r, and state whether that is not a fabric that has warp as well as filling covering the rubber cord, and whether the rubber cords can be seen when stretched as in the old 48.

528 (Objected to for the following reason: That the exhibit referred to has no elasticity in it, and cannot be stretched two to one the same as the old 48 suspenders, and witness therefore cannot judge what the appearance of the exhibit would be when stretched out. The reason is that "Exhibit No. 4, N. A. P.," was never manufactured to have more than one-quarter of its length to be elastic. The rubber cords in said exhibit have become partially rigid and lost their strength, and more warp threads lie under and over the rubber than in the old 48.)

A. I can't answer that question; it is not possible for me to do so; I am not an expert.

Cross 31. Can you not perceive upon comparing the two exhibits, No. 4 and C C C, that if there had been fibrous warp threads as well as filling above the rubber cords the rubber cords could not have been seen when the suspender was stretched?

(Objected to, as counsel for defendants in putting the question to the witness, being an inexpert in weaving, is putting questions to witness which he can't be competent to answer, he having already stated repeatedly that he is not an expert in weaving, and can only speak to general appearance.)

A. Not being an expert, I cannot tell.

Cross 32. Cross-question 31 repeated.

A. I have answered it once that I am not an expert. If you want my opinion, you can't see the rubber in Exhibit 4, as it will not stretch to see through, it being thicker and heavier.

Cross 33. Look at Exhibit No. 3, N. A. P., Ex'r, and state
529 whether the central elastic cord in said exhibit is not covered on one side by both filling and warp and on the other by filling threads only, and whether upon stretching it you cannot perceive said cord on the side of the fabric covered by the filling threads only, and whether it is not entirely hidden on the other side by the combined warp and filling.

(Objected to the same as before, that witness is not an expert in weaving, and Exhibit No. 3, N. A. P., does not show the rubber thread on either side when stretched.)

A. I should answer that I am not an expert in the weaving of the fabric, but the fact is that I cannot see the rubber from either side.

Cross 34. Can you, by stretching it and pressing the central rubber cord up by putting your thumb or finger under it, see the rubber cord on either side?

(Objected for the following reasons: That the counsel for defendant has already been answered fully and fairly by the witness, and now desires him to take unnatural means to displace the fabric from its natural position so as to try to expose the rubber, and then asks him if he cannot see it. The question is illegal, not under the 67th rule, and contrary to common sense. And counsel takes witness off the stand and shows him how it can be done by displacing the weft threads from over the rubber cords.)

A. By pressing the web on the under side the rubber on the upper side cannot be seen; by reversing and pressing the fingers on the upper side and with great effort, a small particle of rubber in one particular place can be seen.

Cross 35. Is not that difference due to the fact that on one side, where it can by possibility be seen, the rubber cord is covered by the filling only, and on the other side by both warp and filling?

530 (Objected to, as witness has frequently testified that he is not an expert in weaving, nor the requisite skill to answer the question.)

A. I am not competent to answer.

Cross 36. Is not that your opinion?

(Objected to as frivolous, and facts are wanted, not opinions.)

A. I should not wish to give it as my opinion.

Cross 37. Is it not your opinion?

(Objected to as before, and further as counsel for defendant appears to be spinning out the time and not to progress in the investigation.)

A. I give the same answer as before.

Cross 38. Have you no opinion with reference to that question?

(Objected to as already answered.)

A. Not one that I would like to express, not being an expert in weaving.

Cross 39. Don't you know that by separating the weft thread, where the weft alone covers the rubber cord, you lay the rubber cord bare, whether that separation is caused by stretching the fabric or any other means; and that the same result will not follow where the cord is covered by both weft and warp, because when you separate the weft threads the warp threads lie over and cover the rubber cord?

(Objected to as the witness has repeatedly said that he was not an expert in weaving, and further that the counsel himself does not *un*derstand the question which he puts; that the result could not be the way he has stated in one part of his question, and that in the

531 other part it would depend on contingencies in the fabric which the counsel has not stated and does not know how to state so as to get an answer, and further pursuing of this course of examination objected to for the above reasons.)

A. I don't know the cause and effect of these things, not being an expert in the weaving business.

Cross 40. Can you give no further information than is contained in your last answer?

A. I cannot.

CHA'S C. NICHOLS.

GEORGE S. WINSLOW, recalled by complainant, duly sworn, doth depose and say, in answer to interrogatories propounded by complainant, as follows:

1. Q. Have you been before examined in these cases?

A. I have.

2. Q. Look at Exhibit C C C, marked "Julius Hotchkiss, Waterbury, Conn.," and say if it resembles the goods formerly known in the market as the 48 suspenders, and sold and made by the Russell Manufacturing Co. and others?

A. It does in the general appearance and the cockly style of the web; it is thicker and wider than those which I formerly purchased of the Russell M'f'g Co.

3. Q. Please state when you commenced dealing in 48 suspenders, and how long you knew them in the market after you so commenced.

A. About twenty years ago I commenced dealing in them; I should think they were in the market about five years afterwards.

And in answer to cross-interrogatories by Benj. Dean, esq., deponent saith as follows:

532 Cross 1. Please examine your books, and then state an account of your first purchases of elastic suspenders, with the designations by which they were severally known.

A. I don't think that I can do so, as I don't know where the books are, and some of them may have been burned or destroyed.

Cross 2. Will you please try?

A. I will.

Cross 3. When the suspenders which you recollect as 48's were stretched what was their appearance?

A. They had a thinner appearance, and you could see the strands of rubber between the threads distinctly when they were fully stretched.

Cross 4. Did you deal in those suspenders when you first went into business, and how long did they remain a favorite in the market?

A. Within a year or thereabouts of that time; I should say they remained a favorite in the market for 5 or 6 years afterwards, to the best of my recollection.

Cross 5. Did you buy suspenders designated by other numbers?

(Objected to as immaterial.)

A. Yes, sir; I think I remember a number 52, made by the Russell Manufacturing Co.

Cross 6. Can you tell how that differed from the 48's?

A. I think it was the same style or character of suspender as the 48's.

Cross 7. Were there not suspenders of the same webbing apparently, designated by different numbers because they were trimmed differently or had different buckles?

A. There were, but differing in thickness and width, and the number of strands of rubber.

Cross 8. In some instances was not the only difference between suspenders of different numbers the difference in the way they were trimmed?

533 A. No, sir; not to the best of my recollection; where there were any imperfections in the webbing of the 48's, they were known as seconds, and were designated by other numbers.

Cross 9. Did you buy and sell at that time, twenty years ago, elastic suspenders that were not cockly in appearance?

A. I suppose I did, but I cannot recollect any numbers.

Cross 10. Did you buy and sell any made of shirred webbing?

(Objected to as immaterial.)

A. I have.

Cross 11. When?

A. Some time after I first went into business.

And in answer to direct interrogatories put de bene esse by W'm Smith, complainant, deponent saith:

4. Q. At the time you bought and sold 48 suspenders with the cockly appearance, and you saw a cockly suspender by any other number, should you recognize it as the old 48 suspender, and look out for the imperfections in it; supposing there could be imperfections in it from its coming into market under another number?

A. I should if it was of the same width and the same number of strands of rubber.

5. Q. When the Russell M'f'g Co. sold 48 suspenders in the market, how did they designate the different widths and the different styles of trimming of the suspenders known as 48's?

A. By numbers—No. 48, 50, 52, &c.; they all had the cockly appearance in the web.

GEORGE S. WINSLOW.

W'M FOSDICK, recalled by complainant, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows:

534 1. Q. Have you been before examined in the above-entitled cases?

A. I have.

2. Q. Look at Exhibit C C C, marked Julius Hotchkiss, Waterbury, Conn., and say if it resembles the goods formerly known in the market as the 48 suspenders, and sold and made by the Russell Man'f'g Co. and others.

A. It has the appearance of the 48 suspender, but the webbing is wider and more rigid; it has the same puckery appearance, and is something thicker.

3. Q. How late did you know such goods to be sold in the market?

A. I think I have seen them within twelve years past, but I should say not within the past six or eight years.

4. Q. Were these suspenders with this cockly appearance the leading style of suspender in the market at the time you were engaged in the sale of such goods?

A. I should say they were the most popular and salable of any in the market.

Adjourned to 3½ p. m.

And to answer to cross-interrogatories propounded to him by Benj. Dean, esq., the counsel for respondent, deponent saith as follows, viz:

Cross 1. How did the 48 suspender web compare with the Exhibit No. 3, N. A. P.?

(Objected to as already answered in a former deposition, and as mere repetition.)

A. I should say the No. 3 was woven more closely, and that it is not as elastic; it is wider and smoother in general appearance.

Cross 2. Does it resemble it in any respect?

(Objected to as already answered and immaterial.)

535 A. There is some resemblance—some general resemblance; I could not point out the details.

Cross 3. Were the rubber cords covered in the same way in each?

A. I should think not.

Cross 4. In what respects do they differ?

A. In stretching the 48, the rubber cords were distinctly discernible, in this they are not.

Cross 5. By what were the rubber cords covered in the 48?

(Objected to as already answered in witness'es former deposition, and as he is not an expert in weaving.)

A. They were covered, when not stretched, by a cotton fabric, but whether with warp and filling both I could not swear.

Cross. 6. When stretched could not the rubber cords be seen between the separated filling threads?

(Objected to as new matter, the direct examination not calling it out, and the witness in his former examination having answered the question over and over again; and, further, that the witness has just answered that he does not know whether the cord was covered with warp and filling both or not, and is therefore incompetent to answer the question.)

A. They could be seen through the fabric, whatever it might have been composed of.

Cross 7. How many kinds of suspenders did you deal in?

(Objected to as answered over and over again.)

A. I do not know.

Cross 8. Can you describe the covering of the rubber cords in any of the suspenders you sold twelve or fifteen years ago?

536 A. I cannot.

Cross 9. In the old 48's was the puckered appearance between the rubber cords only as in Exhibit C C C?

(Objected to as unintelligible to the witness, and for the reason that if there was any pucker in appearance it is impossible it should be anywhere but between the cords.)

A. I could not say certainly—there seems to be more method in this pucker than in that.

Cross 10. How far back does your recollection of the old 48 suspenders go?

A. I should say from 15 to 20 years.

Cross 11. Did you deal in them 20 years ago?

A. I could not swear that I did quite so long ago as that.

Cross 12. How early will you swear that you dealt in them?

A. Fifteen years ago; I may have commenced when I first went into business, but I can't swear as to the exact time.

Cross 13. Were the rubber cords of the old 48s covered in the same way as in Exhibit C C C?

(Objected to as witness has already answered regarding the 48s that he cannot say how they are covered.)

A. I should say that in Exhibit C C C they were covered more thoroughly, but cannot swear as to the method.

Cross 14. How do the selvages compare?

A. I should say that the selvage on C C C was rather more regular and even.

Cross 15. What was the selvage cord in the old 48?

A. I cannot remember.

Cross 16. Was it rubber or cotton?

(Objected to.)

537 A. I could not swear.

Cross 17. Was it thicker on the extreme edge, where the selvage-cord was, than in any other part of the suspender?

(Objected to as leading, and as assuming that there was a selvage-cord on the extreme edge, when all the evidence has been that it had a puckery appearance, and, therefore, could have had no selvage-cord, thus assuming a thing to be a fact which has no existence.)

Defendants' counsel here states that the course of the complainant during the examination of M'r C. C. Nichols and the present witness, in making statements of fact, some of which are on record in the form of objections, deprives the defendants of the benefit of cross-examination, and therefore he withdraws the question.

The complainant, in reply, states that he has fairly stated the nature of his objections, while the counsel for defendants has nearly all through

the cross-examination not confined himself, under the 67th rule, to the line of direct examination, and refers to the last question withdrawn by him as a specimen of his cross-examination.

WILLIAM FOSDICK.

MARSHAL A. LEWIS, recalled by complainant, being duly sworn, doth depose and say, in answer to interrogatories propounded by complainant, as follows, viz:

1. Q. Have you been before examined in the above-entitled cases?
A. I have.
2. Q. Look at Exhibit C C C, marked Julius Hotchkiss, Waterbury, Conn., and say if it resembles the goods formerly known in the market as the 48 suspenders, and sold and made by the Russell M'f'g Co. and others.
538 A. I think it is a little heavier than the old 48s, and a little wider; that is, from present appearance of it. I don't know what effect time may have had upon it. The general appearance is the same. They were sold by the Russell M'f'g Co. I don't know whether they made them or not.
3. Q. Do you mean, by the same general appearance of it, the cockly appearance of it?
A. Yes.

Adjourned to 22d, at 10 a. m.

And in answer to cross-interrogatories propounded to him by Benj. Dean, esq., of counsel for respondents, deponent saith as follows, viz:

Cross 1. Did you buy the suspenders known as 48s when you first went into business?
A. I couldn't say that I bought them the first day that I went into business, but I did buy them when in the auction business, which was from 1846 to 1850—most of the time during that period.
Cross 2. In the 48s is it your impression that the rubber cords were covered by the weft threads or filling, in the same manner as in said Exhibit C C C?
A. I couldn't answer that; in pulling the suspender out you could see the rubber cords that run lengthwise very plainly; but I couldn't say whether they were covered in the same way as in that exhibit.
Cross 3. Were not the rubber strands very much smaller than in this exhibit?
A. I can't say that they were, but they were larger than now; they showed much plainer when stretched than they do now; the goods now made are better than they were made then.
Cross 4. When the 48s were stretched were not the threads or filling which ran across them drawn apart and separated, exposing to view the rubber?
539 (Objected to as new matter not called out by the direct examination, and as counsel for respondent is opening a cross-examination of witness, who was cross-examined in September last, and answered the same question time after time, and also has answered the same to-day respecting the C C Cs and the old 48s that he couldn't give his opinion of them.)
A. When the suspender was stretched lengthwise you could see the rubber, because there wasn't cloth enough to cover it, I suppose; I don't know any other reason. I suppose it was because there wasn't filling enough to cover it.

Cross 5. Look at Exhibit No. 3, N. A. P., the central cord of which appears to be covered on one side by both filling and warp, and on the other side by filling only, and state whether, upon stretching it, you cannot see the rubber on one side only, and which side?

(Objected to, and counsel for respondent is desired to confine himself under the 67th rule to matters called for by the direct examination; and complainant complains of the outrageous course of counsel for respondent in reopening the cross-examination of the witness which, was closed over three months ago before the same examiner.)

A. If I didn't know that there was rubber in these I couldn't see it at all; upon the side that it is covered by both warp and filling you can't see it at all, but by poking it apart a little with your fingers you can see it on the other side; when stretching it I can see something there, but not what it is; I couldn't say it was rubber without poking the filling apart with my fingers.

Cross 6. Do you recollect anything covering the rubber threads of the 48 except the filling threads, which went across them and separated when stretched?

540 (Objected to as answered twenty or thirty times in his former cross-examination, and several times this morning.)

A. I can't answer that exactly; it might be covered by the filling and warp both, and might not; they were very slazy at all events.

Cross 7. Can you give no further description of the 48s than that they were slazy, and the rubber was distinctly seen when stretched?

A. I don't think I could add anything to what I have said before in regard to them.

Cross 8. Was what you have termed the "cockly" appearance of the 48s between the rubber cords only as in Exhibit C C C, and was it regular like said exhibits?

(Objected to, as witness is not an expert in manufacturing and weaving, which he should be to answer the question.)

A. Well, they were cockly, but whether the rubber cockled or not I am not able to say; I know the cloth cockled, but whether both cloth and rubber cockled I cannot say; I don't think it was so regular as that exhibit.

Cross 9. Do you remember of what material the selvage-cord was?

(Objected to for the reason that counsel for respondent is assuming as a matter of fact, which had no existence, that there was a selvage-cord, there having been no selvage-cord either in said exhibit or in the 48s.

Question withdrawn, the complainant rendering nugatory all attempts at cross-examination.

541 The complainant replies that the counsel for respondent has had every opportunity to legally cross-examine the witness, having postponed till to-day for his accommodation, and that to the attempt of counsel to trap the witness into imaginary questions and answers, complainant thinks he has made a very proper and legal objection.)

MARSHAL A. LEWIS.

Present, counsel for both parties.

Adjourned till Thursday, Dec. 23d, 1869, at 10.30 a. m.

NEW YORK, *Dec. 23d*, 1869—10.30 a. m.

542 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

543 NEW YORK, *Dec. 31st*, 1869—10.30 a. m.

Present, counsel for both parties.

CALEB HOLT, being recalled as a witness on behalf of complainant, testifies as follows:

1. Q. Please look at complainant's Exhibit D D D, R. E. S., Ex'r, and state whether it is like or different from the 48 suspenders, which you testified in your previous examination?

A. It is similar to the "forty-eight," respecting the web and style of weaving, although it is wider than the "forty-eight" at the time I used to sell them; the rubber in this appears to be larger than in the "forty-eight;" this appears to be more cockled than some of them, though some of the 48's were equally cockled; the middle space between the rubber cords in this appears to be greater than the middle space of the 48 suspender.

Cross-examination waived.

CALEB HOLT.

LUCIUS LINCOLN, being called as a witness on behalf of plaintiff, and duly sworn, deposes as follows:

1. Q. What is your name, age, residence, and occupation?

A. Lucius Lincoln; my age is 54; reside in Brooklyn; am in "fancy goods."

2. Q. What business were you engaged in from 1849 to 1856?

A. The sale of fancy goods.

3. Q. Did you ever deal in suspenders manufactured by the Russell M'f'g Co., known as the 48 suspenders?

A. Yes, sir.

544 4. Q. From what time to what time?

A. From 1849 on, as long as they continued making them—surely as long as 1855 or 1856.

5. Q. Was the web of the said 48 suspenders like or different from the web complainant's Ex. D D D, R. E. S., ex'r, now submitted to you?

A. I think the general appearance is very similar to the old 48 suspender.

6. Q. How is it as to the cockled appearance between the cords?

A. In 48s they were sometimes that way, and sometimes not.

7. Q. About what time did you first see them without being cockled between the cords?

A. Well, I can't say exactly; my impression is that it was towards the latter part of the time we were selling them.

8. Q. Towards the latter end of the time, when they were not so much cockled, was their elasticity as great as when they were cockled?

A. I think not.

Cross-examination waived.

L. LINCOLN.

DAVID S. HAMMOND, being recalled as a witness on behalf of complainant, testifies as follows:

1. Q. Look at complainant's exhibit D D D, R. E. S., Ex'r, and state whether the web is like or different from the web referred to as 48 suspenders in your former examination?

A. It is exactly like it, sir.

Cross-examined:

Cross 2. In what particulars is it exactly like it?

545 A. In its general appearance and style of manufacture.

Cross 3. What do you mean by "style" of manufacture?

A. The width, color, number of strands, cockling between the strands, quality of yarn, and way of weaving.

Cross 4. What do you mean by way of weaving?

A. I can show better than I can tell what I mean by way of weaving.

Cross 5. How is that piece of goods, in your judgment, woven?

A. Well, the commonest way of weaving common cloth is each weft-thread lapping over alternate warp-threads one and one, but in this the filling-threads are woven combined, not in single threads, but more than one.

Cross 6. You mean to be understood that each weft is composed of several threads.

A. Yes.

Cross 7. Is there any other particular by which you identify it?

A. Nothing especial; a curled edge was a marked feature in these goods always.

DANIEL HAMMOND.

C. BELDEN HALL, being recalled as a witness for complainant, testifies as follows:

1. Q. Look at complainant's Exhibit D D D, R. E. S., Ex'r, and state whether it is like or different from the web of the 48 suspenders referred to in your former testimony.

A. I should think that was the identical article, sir.

Cross-examination waived.

C. BELDEN HALL.

WILLIAM SMITH, recalled as a witness in his own behalf, deposes as follows:

1. Q. Look at complainant's Exhibit D D D, R. E. S., Ex'r, and state what it is, and where you obtained it.

546 A. The first time I saw it was in the Patent Office in the cases of the models of trusses of rejected applications, marked Julius Hotchkiss, Conn.; the next time I saw it was in the possession of a messenger from the Patent Office, in this city; he said that the Commissioner of Patents had given him permission, by the request of M'r Jenckes, one of my counsel, to cut off about one inch from the model and use it in the case. I saw said messenger, in this very room, cut off from the model the Exhibit marked D D D.

Cross-examination waived.

W'M SMITH.

Adjourned till further notice.

547 Circuit court of the United States, district of Massachusetts. In equity.

WILLIAM SMITH
v.
GLENDALE ELASTIC FABRICS CO.

548 Testimony taken under the 67th rule of the Supreme Court of the United States as amended.

CHARLES B. MERRIMAN sworn, examined by M'r Jenckes:

1. Q. What is your name, age, residence, and occupation?

A. Charles Buckingham Merriman; my age is 59 years; my residence, Waterbury; am engaged in manufacturing.

2. Q. Have you been engaged at any time in the manufacture of suspenders containing India rubber? If so, state during what period?

A. I have been interested in the manufacture of rubber suspenders, and occupied incidentally with it since about the beginning of the year 1843; think the year 1842 (cannot give the date more definitely), until the present time.

3. Q. Will you look at the paper purporting to be a certified copy of an affidavit made by you in the case Horace H. Day et al. vs. John Stillman et al., in the circuit court of the United States for the district of Maryland, and state whether you made such affidavit, and whether the facts and statements made therein are true?

(Paper marked Exhibit A shown witness.

Question objected to as leading and incompetent.)

A. I made an affidavit several years since in New York. I presume about that time, in 1859, and have no reason to doubt that I signed an affidavit of which this is a copy, and I have no reason to doubt that the facts stated herein are true.

4. Q. Examine the paper now shown to you, marked Exhibit B, purporting to be a certified copy of your testimony given in the case in equity Charles Goodyear and William Judson vs. Horace H.
549 Day, in the southern district of New York, and state whether the facts stated in your answers are true, and whether the exhibits annexed to said deposition are genuine?

(Paper shown witness marked Exhibit B.

Question objected to as leading, and as otherwise irregular and incompetent, and also because the record shown is imperfect and incomplete, the interrogatories being wanting.)

A. I remember to have given a deposition about the time that this deposition purports to have been given, and have no reason to doubt that the facts stated herein are substantially true, and I have no doubt that the two samples of webbing hereto attached were furnished by me; I wish to qualify the evidence I have given in reference to this document by excepting to those parts of it where the questions are not given.

5. Q. State the numbers of answers to which your qualification extends.

A. On examining the papers I do not care to make any exception.

Cross-examined by Benjamin Dean, esq.:

Cross 6. When you first became interested in the business of manufacturing suspenders, did you not make other kinds of elastic webbing than the two samples already shown you, and which you have indentified?

A. We made those less elastic than these are, and of closer texture.

Cross 7. Look at the piece now shown you, and marked Exhibit 8, and state whether you wove webbing like that.

(Objected to.

Exhibit 8 shown witness.)

550 A. I am unable to discover any difference between this and some webbing we wove at that time.

Cross 8. Look at the piece now shown you, and marked Exhibit 13, and state whether you then wove webbing like it.

(Objected to.)

A. I think we did.

Cross 9. Did you weave webbing of other patterns and kinds than any shown you during the taking of your testimony?

(Objected to.)

A. We did weave webbing of other patterns.

Cross 10. Under what name did you commence the business of manufacturing webbing, and under what names has the business since been carried on?

A. I commenced in the latter part of 1842, or quite early in 1843, under the name of Hotchkiss and Merriman; in 1843 we formed a stock company, under the name of Hotchkiss and Merriman Manufacturing Company; in 1856 or 1857 it was merged into the American Suspender Company under the joint-stock law of that State, and has so continued ever since; of this last company and the previous I have been a stockholder, treasurer, and director.

Re-examined by M'r Jenckes:

11. Q. State whether any goods containing vulcanized rubber were made and sold by either of the companies you have named prior to the expiration of the Goodyear patent.

A. They were made and sold before the year 1865.

12. Q. What kinds of goods were so made and sold, and in what years?

A. We made goods in 1845 by cementing two pieces of cloth together, with vulcanized rubber between; we bought those goods of Goodyear already cemented, and cut them up and made suspenders of them.

13. Q. Is the rubber in the samples 8 and 13, now shown to you, vulcanized or unvulcanized?

551 A. I take No. 8 to be vulcanized and 13 to be unvulcanized; I have some doubt about 13; it loses its elasticity by age, and I have lost my sense of smell, so that I cannot tell by that.

14. Q. Do you consider yourself an expert either in the weaving or manufacture of rubber?

A. No, sir; I do not.

CHA'S B. MERRIMAN.

Taken, subscribed, and sworn to before me at Hartford, in the State and district of Connecticut, this 19th day of August, A. D. 1869.

Attest.

L. P. WALDO, *Examiner.*

EXHIBIT A.

Circuit court of the United States for the district of Maryland.

HORACE H. DEY ET AL.
vs.
JOHN STILLMAN AND OTHERS.

THE SAME
vs.
JOHN STILLMAN AND OTHERS.

In equity. On motion for preliminary injunction.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, ss:

Charles B. Merriman, being duly sworn, says that for over fif-
552 teen years last past he has been engaged in the manufacture of rubber suspenders as a member of the Hotchkiss & Merriman Manufacturing Company and the American Suspender Company; that about the years 1844 and 1845 deponent's company made suspenders of an unusually elastic kind by weaving fibrous matter over strands of rubber unvulcanized while in a state of tension; such suspenders were made and were sold by deponent in the different markets in large quantities as and by the name of "woven shir'ed suspenders," in contradistinction to suspenders made by deponent's company at the same time out of cemented shir'ed goods purchased from the Naugatuck Company; that suspenders made from goods so purchased and said woven suspenders were both known and called "shir'ed suspenders."

CHA'S B. MERRIMAN.

Sworn to before me this 25th day of March, 1859.

W. J. A. FULLER,
A Notary Public, duly commissioned and sworn, and dwelling in City and District aforesaid.

In testimony that the foregoing is a true copy of the original on file among the record and proceedings of the district court of the United States, I hereunto subscribe my name and affix the seal of the said circuit court this twenty-fourth day of June, anno Domini 1869.

[SEAL.]

JA'S W. CHELD,
Clerk District Court.

EXHIBIT B.

And I was attended by CHARLES B. MERRIMAN, of Waterbury, Connecticut, a witness of lawful age, who, being by me duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, deposes and says as follows:

553 11. To the eleventh direct interrogatory the witness saith: My name is Charles B. Merriman; age about fifty years; residence, Waterbury, Connecticut; occupation, India-rubber manufacturer.

12. To the twelfth direct interrogatory he saith: I have been engaged as a manufacturer of such goods for the last seventeen years at Waterbury, Connecticut; the kind of goods I have manufactured were principally webbing, suspenders, elastics, &c.; they were used for suspenders, shoulder braces, garters, &c.; they were all made by weaving.

13. To the thirteenth direct interrogatory he saith: I have manufactured them for seventeen years, as before stated, and have been familiar with them before that time.

14. To the fourteenth direct interrogatory he saith: They were similar to the annexed samples, but were not made of vulcanized rubber; I remember seeing such goods first in 1843.

15. To the fifteenth direct interrogatory he saith: They have always.

16. To the sixteenth direct interrogatory he saith: Where the fabric is drawn up in a crinkled form by the India rubber.

17. To the seventeenth direct interrogatory he saith: They designate the appearance of the goods.

18. To the eighteenth direct interrogatory he saith: Of course they are.

19. To the nineteenth direct interrogatory he saith: I have sold both cemented and woven goods in the market as "shirred goods."

20. To the twentieth direct interrogatory he saith: They were; I can't fix the date when I first saw such goods, but I know that I saw imported woven suspenders before and made such myself in 1843. So far as I know there is no difference in the properties and uses of such goods and the properties and uses of like goods made by cementing instead of by weaving or by sewing.

554 103. To the one hundred and third direct interrogatory he saith: I have answered this question in a previous deposition which I will repeat in substance here. For seventeen years last past I have been engaged in the manufacture of rubber suspenders, as a member of the Hotchkiss and Merriman Manufacturing Company and the American Suspender Company. About the year 1844-'5 our company made suspenders of an unusually elastic kind by weaving fibrous matter over strands of rubber, unvulcanized, while in a state of tension. Such suspenders were made and were sold by me, in the different markets, in large quantities, as and by the name of "woven shirred suspenders," in contradistinction to suspenders made by our company at the same time out of shirred goods purchased from the Naugatuck Company. Suspenders made from goods so purchased and said woven suspenders were both known and called "shirred suspenders." I am confident that the boxes containing those suspenders were labeled "Shirred suspenders," and the cartons containing the garters made at that time, or about that time, were labeled "Corrugated elastics." I hand to the commissioner two of such labels so used by us, to be annexed hereto and marked Nos. 117 and 118. I also hand him a sample of webbing marked No. 119 used for these "corrugated elastics." I also hand him a sample of webbing marked No. 120, subsequently made for the same purpose by us.

CHA'S B. MERRIMAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this first day of May, 1860.

P. W. OSTRANDER,
Commissioner.

Cross examination:

555 14. To the fourteenth cross-interrogatory he saith: I was engaged in mercantile business up to 1843, and after that I added the India-rubber manufacturing.

15. To the fifteenth cross-interrogatory he saith: I have already answered so much of the question as I can reply to without reference to my books, which I have not got with me.

16. To the sixteenth cross-interrogatory he saith: I have already answered the question.

17. To the seventeenth cross-interrogatory he saith: I know nothing about it beyond what I have already stated.

18. To the eighteenth cross-interrogatory he saith: I was acquainted with cemented shirred goods before 1846; I purchased large quantities of piece goods of the Naugatuck India-rubber Company, and manufactured them into suspenders.

19. To the nineteenth cross-interrogatory he saith: I suppose it was.

20. To the twentieth cross-interrogatory he saith: That question is answered by my last answer.

21. To the twenty-first cross interrogatory he saith: I had no knowledge of the goods previous to 1842.

22. To the twenty-second cross-interrogatory he saith: I do.

23. To the twenty-third cross-interrogatory he saith: I do.

24. To the twenty-fourth cross interrogatory he saith: I can't give the names.

25. To the twenty-fifth cross-interrogatory he saith: They were manufactured both by cementing and by weaving. They were more elastic.

26. To the twenty-sixth cross-interrogatory he saith: Yes.

27. To the twenty-seventh cross-interrogatory he says: I don't know when M'r Goodyear did invent and put into market shirred goods.

28. To the twenty-eighth cross-interrogatory he saith: India-rubber suspenders.

556 29. To the twenty-ninth cross-interrogatory he saith: I know they were manufactured at Middletown and Waterbury.

30. To the thirtieth cross-interrogatory he saith: They were by our company.

31. To the thirty-first cross-interrogatory he saith: Yes, somewhat similar.

32. To the thirty-second cross-interrogatory he saith: Yes, it was 1844.

33. To the thirty-third cross-interrogatory he saith: Not to my knowledge.

34. To the thirty-fourth cross-interrogatory he saith: Not to my knowledge.

35. To the thirty-fifth cross interrogatory he saith: Not to my knowledge.

36. To the thirty-sixth cross-interrogatory he saith: I so understand it.

37. To the thirty-seventh cross-interrogatory he saith: I can't say that it was.

38. To the thirty-eighth cross-interrogatory he saith: No, I never heard any claim about it.

39. To the thirty-ninth cross-interrogatory he saith: When they came into market they did compete with the woven goods.

40. To the fortieth cross-interrogatory he saith: Yes.

41. To the forty-first cross-interrogatory he saith: Yes.

42. To the forty-second cross interrogatory he saith: They were sold as shirred goods.

43. To the forty-third cross-interrogatory he saith: Yes, as one was woven and the other cemented.

44. To the forty-fourth cross-interrogatory he saith: I do.

136. To the one hundred and thirty-sixth cross interrogatory he saith:

137. To the one hundred and thirty-seventh cross-interrogatory he saith: No.

557 138. To the one hundred and thirty-eighth cross-interrogatory he saith: No.

139. To the one hundred and thirty-ninth cross-interrogatory he saith: No.

140. To the one hundred and fortieth cross-interrogatory he saith: No.

141. To the one hundred and forty-first cross interrogatory he saith: No.

CHA'S B. MERRIMAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me, this 1st day of May, 1860.

P. W. OSTRANDER,
Commissioner.

At an examination of witnesses in the suit of Charles Goodyear and William Judson against Horace W. Day, before me, this first day of May, 1860, the samples and labels hereto annexed, marked P. W. O. (two samples and labels) were produced by the witness, Charles B. Merriman, and by him deposed to at the time of his examination before me, and marked by me Nos. 117, 118, 119, and 120.

P. W. OSTRANDER,
Commissioner.
CHA'S B. MERRIMAN.

A copy.
[SEAL.] KENNETH G. WHITE,
Clerk.

558 Testimony taken under 67th rule of the Supreme Court of the United States as amended.

FERDINAND A. HART sworn, and examined by M'r Jenckes:

1. Q. What is your name, age, residence, and occupation?

A. My name is Ferdinand A. Hart; my age 72 years; my residence Middletown, in Middlesex County, and occupation is manufacturing.

2. Q. Were you ever in the employment of the Russell Manufacturing Company; and, if so, at what time and in what capacity?

A. In 1833, I was engaged with them as half owner in the business of manufacturing suspenders without rubber, and so continued for about three years, when I left them, and about ten years afterwards I went into their employment as general agent for the sale of their goods; I owned stock in their concern and was their general agent for selling.

3. Q. Have you any means of fixing the date when you went back?

A. No, I have not.

4. Q. Can you state the date within a year or two years?

A. I don't know as I could; it has passed my mind; I could at home, but could not here.

5. Q. Have you in your possession, or can you obtain any samples of the suspenders that you sold as the agent of the Russell Manufacturing Company?

A. I have not in my possession, and do not know as I could get any, but think I might from the Russell Mill.

6. Q. When you first became their agent was any portion of the goods made by them and sold by you corrugated, or with a corrugated surface; and, if so, state what portion?

A. They made and I sold what is called "Forty-eight web" suspenders.

7. Q. What do you mean by "Forty-eight web" suspenders?

559 A. It is a very elastic, coarse fabric, and loosely put together.

8. Q. Were the rubber threads vulcanized or unvulcanized?

A. Unvulcanized—native rubber, as it was called.

9. Q. Of what size were these India-rubber threads?

A. I should think quite fine; I do not know the number, have forgotten.

10. Q. How far apart were they placed in the fabric?

A. I cannot tell; I never attended to the manufacturing.

11. Q. How many threads were there in one width of suspender?

A. I should think there was fourteen, if my memory serves me.

12. Q. How great was the elastic property of this suspender?

A. I should think it would be about six inches to each suspender of eighteen inches in length.

13. Q. Were they making this kind of suspenders when you returned to their employment, or did they commence making it after your return?

A. They were making it when I returned.

14. Q. Look at the colored sample annexed to the deposition of Charles B. Merriman, and state in what respects web No. 48 resembled, and in what it differed from that sample?

A. Was not as rough as this on its face; was more like this when extended.

15. Q. To whom did you sell this kind of suspender? Name some of the principal customers?

A. Sealah Hart, jr., of Philadelphia; Burnham & Plumb, of New York; Levi Cook & Co., New York; W'm H. Cary & Co., New York; Burnham, Plumb & Co., Boston; W'm H. Lyon, of New York; Spellman & Frazier, of New York; Pursell, Matteson & Tayler, New York; and a great many names that I cannot bring to mind.

16. Q. Do you know where a pair of these suspenders or a piece of this webbing can now be found?

560 A. I think I can get a pair of what is called "forty-eight."

17. Q. Do you know of any now in existence which were made prior to 1855?

A. I cannot say that I do.

18. Q. How long prior to 1855 did you return to the employment of the Russell Manufacturing Company?

A. I have no dates that I could tell here.

19. Q. Did you ever know a man by the name of Thomas Hope?

A. I think I know him; I think he was an Englishman in business with the Russell Company.

20. Q. Was he in business with them before or after your return?

A. Before.

21. Q. How long before?

A. It would be impossible for me to tell.

22. Q. Was it as much as two years?

A. It was as much as that, or more.

23. Q. What was his special business with the Russell Manufacturing Company?

A. Making up the rubber thread.

24. Q. Did he introduce a new way of cutting thread?

A. I don't know particular about cutting; but he introduced a new way of making it up, ready for cutting.

25. Q. Were the threads he cut finer or coarser than before?
A. I cannot say. He could cut it any thickness.

Cross-examined by M'r Dean:

Cross 26. Look at Exhibit 13, and see how that compares with "forty-eight" suspender webbing.

A. I should think it was very much like it, only wove up a little tighter; much the same fabric.

Cross 27. How long has the Russell Company been making "forty-eight" prior to your return into their employ?

561 A. I should think it must have been at least ten years, but I cannot say precise.

Cross 28. Were not the "forty-eight" suspenders among the first elastic suspenders that were made, and were they not a long time the favorite in the market?

A. They were.

Cross 29. Did you know of imported elastic suspenders prior to or about the time of your return into the employ of the Russell Company?

A. I did.

Cross 30. Did you know at that time of other American elastic suspenders?

A. I did.

Cross 31. Did you know of a kind like the "forty-eight" in the centre with ruffled edge?

A. I cannot say that I did.

Cross 32. Can you now describe the other kinds that you did see without having sample of them?

A. I cannot.

F. A. HART.

Taken, subscribed, and sworn to before me, at Hartford, in the State and district of Connecticut, this 19th day of August, A. D. 1869.

Attest.

LOREN P. WALDO,
Examiner, &c.

Subpœna.

The President of the United States of America to the marshal of the district of Connecticut.

To John R. Williams, of Middletown, sendeth greeting:

We command you to appear before Loren P. Waldo, a commissioner of the circuit court of the United States, at his office, 345 Main
562 street, in Hartford, in the county of Hartford, and the State of Connecticut, on the 5th day of November, A. D. 1869, to wit, to appear before said court the 5th day of November, A. D. 1869, at 10 o'clock in the noon, then and there to testify what you know in a certain cause pending in said court, wherein William Smith, of New York, is plaintiff, and sundry persons are defendants, and have you there in court as exhibits such samples, descriptions, and exhibits of what is known and called the old 48 suspender webbing, and made previous to 1849, as may be now in your possession and control. Hereof fail not, &c.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Hartford, in the State of Connecticut, this 1st day of November, A. D. 1869.

[SEAL.] LOREN P. WALDO, *Clerk.*

UNITED STATES OF AMERICA,
District of Connecticut, ss:

MIDDLETOWN, *Nov. 2d*, 1869.

Then I left a true and attested copy of this subpœna and notice with John R. Williams, of Middletown.

Attest.

PETER R. CARLL,
U. S. Marshall,
By WESTELL RUSSELL,
Deputy U. S. Marshall.

Fees: 3.00; copy 50; service, 2.00.

Deposition taken the 5th day of November, A. D. 1869, by the undersigned examiner, duly appointed and sworn, as the law directs, under the 67th rule as amended.

Hon. Julius Hotchkiss, of the town of Middletown, in the county of Middlesex, and State and district of Connecticut, being duly cautioned and sworn, testifies as follows, to wit:

563 1. Q. What is your name, age, residence, and occupation?

A. Julius Hotchkiss; my age is fifty-nine years; my residence Middletown, Conn., and am not at present engaged in any particular occupation; have been a manufacturer.

2. Q. Have you been engaged at any time in the manufacture of elastic suspenders containing threads of India rubber? If so, state during what period, at what place, and in what copartnership or corporation?

A. I was engaged in the manufacture of India-rubber suspenders in the copartnership of Hotchkiss & Pritchard, in the year 1841 and 1842; in the copartnership of Hotchkiss & Merriman in the year 1843; in the corporation of Hotchkiss & Merriman Manufacturing Company from the year 1843 to the year 1855, all in the town of Waterbury, county of New Haven, and State of Connecticut; and since the year 1855 I have been interested in the Russell Manufacturing Company, in Middletown, engaged in the same business.

3. Q. Please look at the paper now shown you, marked Double E E., L. P. W., purporting to be a copy of an affidavit given by you in the case of Horace H. Day et al. and Edwin A. Brooks, and the same vs. Cay Howard and Sanger, and state whether you signed your name to the original of which this is a certified copy, and whether the facts stated in this affidavit are true.

(Objected to by M'r Dean, counsel for the respondent, as leading and otherwise incompetent.

A. I have no recollection of signing such a paper, but the facts herein stated are true as far as they go.

4. Q. Please look at this letter marked F F, L. P. W., dated Middletown, August 24, 1869, and please say if you wrote that letter, and if that is your signature at the bottom of it.

564 A. Yes, sir; I wrote that letter, and that is my signature at the bottom of it, and was written in answer to an invitation from M'r Smith to give further evidence in New York, and to go to New York for that purpose.

5. Q. Look at complainant's exhibit, marked G G, L. P. W., and say whether that is not the same, or similar with the respondent's exhibit marked No. 6, and which, in your testimony before R. S. Stillwell, in June last, was called the Dice webbing?

A. I saw goods of this character at that time, and they are known as Dice webbing.

6. Q. Please state if goods of this character, marked No. 6, was not shown to you, on which you then gave testimony.

A. I do not recollect.

7. Q. Please look again at complainant's exhibit, marked G G, L. P. W., and state whether that kind of goods has not always been known in the market as Dice webbing?

A. They have generally been known as Dice webbing.

8. Q. In your cross-examination last June, before R. S. Stillwell, by Hon. T. A. Jenckes, in your answer to the last question but one, which was omitted to be put on the record, and which was as follows: When you make goods like Exhibit No. 1, how did you place the rubber threads in the reeds? Please say what was your answer.

(Objected to by M'r Dean, as improperly and falsely stating there was an omission on the record, and as attempting to prove by parol what can only be proved, if at all, by the record.)

The complainant makes this statement in answer to the above objection: That the omission mentioned was true; that the complainant and the Hon. T. A. Jenckes and M'r Blake, counsel for complainant,
565 heard the question read and the answer given thereto, which was so satisfactory to the counsel that they only put after that one immaterial question; and the complainant and both counsel saw M'r Julius Hotchkiss sign the deposition, and then retired from the room, leaving therein M'r Hotchkiss, E. H. Sawyer, E. G. Judson, and M'r George Gifford, and the answer omitted to be put on record was as follows: That we put the rubber threads in every third dent of the reed, with binding threads in the same dent, on each side of the rubber threads.

(The whole of the above statement objected to by M'r Dean, counsel for the respondents, as inadmissible and irrelevant, de bene esse.)

A. I cannot recal' either the question or answer.

9. Q. Can you say that such a question was not put, and that such an answer was not made?

(Objected to.)

A. I cannot say that such a question was not put, but I do not think that I made such an answer.

10. Q. Will you swear that such a question was not put and such an answer was not made.

A. No.

On the cross-examination he testified as follows:

By Benjamin Dean, esq., counsel for respondents:

Cross 1. In your answer to the third interrogatory you say the facts stated in Exhibit E E are true as far as they go. Do you remember that you made other elastic suspender webbing than those described therein?

(Objected to by M'r Smith, the complainant, as leading.)

566 A. I did mean that, and also that my business relations with others was not fully stated.

Cross 2. Can you describe any suspender webbings manufactured by you, or any copartnership or corporation with which you were connected, before the years 1844 and 1845?

(Objected to as new matter. Also that the witness had already been examined and cross-examined on the same subject and in the same years as above stated; that if witness is required by defendants, they must recal' him and re-examine him as their own witness, after due no-

ce given. That this subject cannot be enquired into on the cross-examination of plaintiff's witness.)

The counsel for the defendants here says, that if the complainant will stipulate that the former depositions of the witness may be used as evidence in the suit of the complainant against Nathan Nichols, pending in the district of Massachusetts, he will waive all cross-examination, and he asks M'r Smith if he will so stipulate.

The complainant indignantly refuses to make the stipulation, and requests the counsel to attend to his own business and let complainant's business alone.

A. The suspender webbing we made was known as covered dice shirred, and what is known as 48.

Cross 3. Have you any examples of the kind of webbing by you then made? And, if so, please annex them to your deposition.

A. I have one which is a sample of the kind known as 48, which is marked Defendant's Exhibit H H, L. P. W. I have none others with me. We made others like the 48, leaving off the round selvage.

Cross 4. How were the rubber cords covered on each side of the fabric?

567 (Objected to by the complainant as leading, and also because the witness says he is no expert in weaving.)

A. Simply by the filling threads.

Cross 5. How were the filling threads held against the rubber cords?

A. By the binding warps alongside of the rubber cords.

Cross 6. How long did you continue to manufacture such suspender webbings, and what was done with them?

A. They have been made from 1841 to the present time, cut up into suspenders, and sold in the market in large quantities.

Cross 7. Were they made at the time suspenders were also made of cemented goods, as stated in Complainant's Exhibit E E?

A. They were.

Cross 8. How were the rubber cords in the suspenders made; of woven goods, described in the latter part of Exhibit E E, covered on each side of the fabric?

(Objected to by the complainant as leading.)

A. The shirred woven goods which we made and referred to in Exhibit E E were covered the same as 48, three rubber threads being placed together in one dent and a wider space between them so the goods would plait when shrunk.

Cross 9. Why did you endeavor to make them plait or corrogate?

A. To give them greater elasticity, and to copy a popular suspender of Goodyear's which was in the market at that time, being the kind first alluded to in Exhibit E E.

Cross 10. Was it the knowledge that suspenders were made as you have described, long before the complainant's patent that you alluded to in your letter to the complainant, marked F F?

A. It was.

568 In the re-examination of the witness by the complainant he testified as follows:

(The complainant's re-examination was de bene esse.)

1. Q. Please look at the defendants exhibit, marked H H, L. P. W., and say how many hours or days that piece has been woven.

A. I cannot tell you.

2. Q. Please say to the best of your knowledge and belief how long it has been woven.

A. Within the past year.

3. Q. Please state by what number the Defendant's Exhibit H H is known in the market at the present time.

A. It was formerly known as 48; cannot tell what the number now is.

4. Q. Please state the latest date that you have known it as number 48.

A. It was so known when I left the business two and one-half years ago.

5. Q. Please say to the best of your recollection when you first knew these in market as number 48.

A. I knew the web known as 48 as early as 1842.

6. Q. Was the web which you knew in 1842 as No. 48 similar in make and construction to Defendant's Exhibit H H?

A. As to the body of the webb, it was.

7. Q. In your direct examination you named the copartnerships and corporation with which you were connected; will you please state the persons to whom you sold goods similar in make and construction to Defendant's Exhibit H H, and which was known as No. 48?

A. Similar in make and construction we sold to all the leading houses in New York, Philadelphia, Baltimore, and Boston who dealt in that class of goods.

8. Q. You stated in your redirect examination that you have known the goods as 48 since 1842; please state when you have known them as 48, who manufactured them, and who sold them as No. 48.

569 By goods which I have heard called No. 48 I have meant goods similar in make and construction to No. 48, and I have intended to say the firms and corporations in which I have been engaged have manufactured these goods since 1842 to the present time, but the precise time these goods took the name No. 48 I do not pretend to give.

9. Q. State to whom you have sold goods similar to Defendants' Exhibit H H, and by what No. you sold them.

A. We have sold goods to all the leading firms in the trade, but I am, in the absence of our books, unable to give the numbers under which those sales were made.

10. Q. Did you ever sell any suspenders elastic by the name of elasticated suspenders; if so, to whom?

A. It is the first time to my recollection that I ever heard the word elasticated. I have no recollection of ever selling by that name.

11. Q. In your cross-examination, in referring to exhibit of complainant E E, you speak of putting two or three rubbers together and far apart to make corrugated woven webbing; please state how far apart.

A. I should say from one-eighth to one fourth of an inch.

12. Q. Do you think you are not mistaken in the distance?

A. I do not.

13. Q. You state you put them apart to get more elasticity into them and to imitate Goodyear's corrugated suspenders. Was that the only method you know of getting elasticity into them sufficiently to imitate Goodyear's goods? And if you know any other way, please state it.

A. That was the method we adopted to imitate Goodyear's goods, as these cords of rubber without binding would produce greater elasticity than they would singly with binding. I do not know any other mode to produce that exact result.

14. Q. Please state what amount of elasticity there was in these goods.

A. About two to one.

(Signed) JULIUS HOTCHKISS.

570 I, Loren P. Waldo, examiner appointed by the circuit court within and for the district of Connecticut, in the second circuit, and duly sworn under the 67th rule as amended, do certify that the above-named Julius Hotchkiss was legally summoned to appear before me this day and testify his knowledge in the causes named in the commencement of this deposition, and the said Hotchkiss having appeared in pursuance of said summons, was by me duly cautioned and sworn to speak the truth. And thereupon the foregoing deposition was reduced to writing by me in his presence, and from statements made by him, and after having carefully read the same to him, he subscribed the same in my presence and made solemn oath to the truth of the same. And I further certify that I am not of counsel nor attorney for either of the parties to either of the suits named in said deposition or the caption thereof, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand and name, officially, this 8th day of November, A. D. 1869.

(Defendant's Exhibit 48, H H., L. P. W.)

(Marked double E E., L. P. W. Exhibit E E., L. P. W.)

571 U. S. circuit court, southern district of New York.

HORACE H. DAY AND OTHERS
vs.
EDWIN A. BROOKS.

SAME
vs.
PETER MURRAY.

SAME
vs.
CAY, HOWARD & SANGER.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Julius Hotchkiss, being duly sworn, deposes and says that he resides in Middletown, Connecticut, and was a member of the Hotchkiss & Merriman Manufacturing Company and the American Suspender Company.

572 That during the years 1844 and 1845, and until within the last few years, the company was the Hotchkiss & Merriman Manufacturing Company. That the goods which such company purchased about the years 1844 and 1845, and of which they make suspenders, consisted of two pieces of cloth having strips of rubber between them, the pieces of cloth being cemented together between the strips of rubber, and also cemented to the strips of rubber, such as was known as corrugated or shirred India-rubber goods. That deponent's company, about the years aforesaid, wove some suspenders with threads of rubber woven in as a part of the warp, and with cloth of only textile material between the threads and rubber, so that as the threads of rubber contracted the cloth between them was drawn up in plaits.

But the deponent says that this kind of woven suspenders was known as and sold as a woven article.

JULIUS HOTCHKISS.

Sworn to before me this 30th day of Dec., 1858.

GERARDUS C. KING,
Notary Public.

In testimony that the aforegoing is a true copy of the original on file among the records and proceedings of the circuit court of the United States I hereunto subscribe my name and affix the seal of said circuit court this 24th day of June, A. D. 1869.

[SEAL.] JA'S W. CHASE, *Clerk.*

(Marked F F, L. P. W, Exhibit F F, L. P. W.)

M'r SMITH:

DEAR SIR: I have yours of yesterday. I am not well since my return home. I have no business in New York and prefer not to come, neither can I be of any use to you.

573 If you will review my testimony, you will see that I had knowledge of the goods you patented being made long anterior to your patent. The knowledge of this fact, verified as it is by undoubted witnesses, I think should convince you of the hopelessness of your claim.

Yours, truly,

J. HOTCHKISS.

Marked G G. Marked G G.

The within and foregoing is a true copy of the original deposition and exhibits taken and made before me.

Attest:

L. P. WALDO,
Examiner.

(Exhibit M M attached here.)

Complainant's Exhibit L L, L. P. W.

The President of the United States of America to the marshal of the district of Connecticut:

To John R. Williams, of Middletown, sendeth greeting:

We command you to appear before Loren P. Waldo, a commissioner of the circuit court of the United States, at his office, 345 Main street, in Hartford, in the county of Hartford and the State of Connecticut, for the State and district of Connecticut, in the second circuit, on the 5th day of November, A. D. 1869, to wit, to appear before said court on the 5th day of November, A. D. 1869, at 10 o'clock in the forenoon, then and there to testify what you know, in a certain cause pending in said court, wherein William Smith, of New York, is plaintiff, and J. T. Whitehouse et al., Nathan Nichols, and Ithiel F. Farnum, in separate

574 suits, are defendants, and have with you there in court as exhibits such samples, descriptions, and exhibits, of what is known and called the old 48 suspender webbing, and made previous to 1849, as may now be in your possession and control. Hereof fail not, &c.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Hartford, in the State of Connecticut, this 1st day of November, A. D. 1869.

[SEAL.] LOREN P. WALDO, *Clerk.*

This is a true copy of the original subpœna and notice.

Attest:

PETER R. CARLL,
U. S. Marshal,
By WESTELL RUSSELL,
Deputy U. S. Marshal.

Deposition taken the 5th day of November, 1869, by the undersigned examiner, under the 67th rule as amended.

JOHN R. WILLIAMS, of the town of Middletown, in the county of Middlesex and State of Connecticut, being duly cautioned and sworn, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is John R. Williams; my age is forty-six years; my occupation is a weaver; my residence is Middletown, Conn.

2. Q. Please state how long you have been engaged with the Russell Manufacturing Co. in the weaving of elastic suspenders.

A. Twenty-seven years.

3. Q. Look on Exhibit I L, and say from whom and how you received it.

575 A. This paper was given me by the Hon. Henry Hubbard, of Middletown, and I have come to this place to-day in pursuance thereof.

4. Q. Have you received your fees for attending here as a witness?

A. I have since I came here.

5. Q. Have you brought any samples of 48 elastic suspender webbing made prior to 1865?

A. I do not know when the pair I brought was made.

6. Q. Have you brought any samples made before 1855?

A. I do not know when it was made. I have brought a sample of 48 web*b* which I supposed was what was wanted.

7. Q. Please look on complainant's Exhibit M M, and state when it was woven.

A. I cannot tell when it was made. I took it from the suspender shop as a sample of 48, supposing it was what was wanted. I have samples of other web*b*s made a long time ago.

On the cross-examination he testified as follows:

By B. Dean, esq., counsel for the respondents:

Cross 1. How long ago?

A. Some of the first of that kind of goods were made when I first commenced with Russell & Co., over twenty-five years ago.

Cross 2. How do those samples which you have at home differ, if at all, from Exhibit M M?

A. They were not so smooth goods, but made in the same way; the rubber warp or cords were covered in the same manner as in this exhibit by the filling alone.

(Objected to by the complainant as new matter.)

Cross 3. Why did you not bring the old samples?

A. I did not notice in the subpœna that I was required to bring samples made prior to 1849, but will bring them now if required.

576 Cross 4. Have you samples of other goods made by you prior to 1849, where the rubber strands are covered by the filling alone and where the filling threads are held against the rubber by the intervening warp threads?

A. I have not.

Question by complainant: Q. Did the Hon. Henry G. Hubbard know that you were summoned to appear and give testimony on the old 48 suspenders at this time and place?

A. I do not know; he handed me the copy of the subpœna, saying here is a call for you to go to Hartford to-morrow.

And further deponent saith not.

JOHN R. WILLIAMS.

Testimony taken under the 67th rule of the Supreme Court of the United States as amended.

CHARLES B. MERRIMAN sworn.

Examined by A. P. Hyde, esq.:

1. Q. What is your name, age, residence, and occupation?

A. Charles Buckingham Merriman; my age is sixty years; my residence is Waterbury, Connecticut; am engaged in manufacturing.

2. Q. Are you the same Charles B. Merriman who subscribed and made oath to a deposition before Loren P. Waldo, examiner, on the 19th day of August, A. D. 1869?

A. I am.

3. Q. Look at this document marked X X, L. P. W., and say whether this is the deposition you then gave.

A. Yes, sir.

4. Q. Look at and examine this document, marked Exhibit Y Y, L. P. W., and read the direct interrogatories therein numbered from
577 11 to 20 inclusive, and the cross-interrogatories numbered from 26 to 44 inclusive, all of which have just been read to you; and also examine the answers contained in Exhibit B, annexed to your depositions given August 19th, A. D. 1869, numbered from 11 to 20 inclusive, and the answers to cross-examinations therein numbered from 26 to 44 inclusive, which have just been read to you, and say whether those interrogatories are the same that were put to you when you gave the answers in said Exhibit B.

A. I have no reason to doubt it.

5. Q. Are the facts stated in the answers in Exhibit B true, according to your present recollection?

A. Yes, with the exception of the answers to the 18th direct and 30th and 36th cross interrogatories.

Cross-examined by William C. Witter, esq.:

Cross 1. Is the white sample referred to by you in this examination, which is annexed to Exhibit B, properly styled corrugated or shirred, in your present opinion?

A. It has a corrugated edge; the body is not corrugated.

Cross 2. Were all the goods manufactured and sold by you previous to the year 1846 known or styled shirred or corrugated?

A. They were not.

Cross 3. What should have been the answer to the 36th cross-interrogatory?

A. The answer should have been, "I do not so understand it."

CHA'S B. MERRIMAN.

Taken, subscribed, and sworn to before me, at Hartford, in the State and district of Connecticut, this 29th day of November, A. D. 1869.

LOREN P. WALDO,
Examiner.

578 CIRCUIT COURT OF THE UNITED STATES,
District of Connecticut, ss:

This is to certify that the plaintiff in the above-entitled causes having given notice to the respondents that he desired that the evidence in said causes should be taken orally under the 67th rule in equity as amended, the above-named deponent, Charles B. Merriman, was duly summoned to appear, and did appear, before me, Loren P. Waldo, an examiner duly appointed by the United States circuit court within and for the

district of Connecticut, at my office, in Hartford, in said district, on this 29th day of November, A. D. 1869, and, after having been duly cautioned and sworn, was examined by the counsel of the plaintiff and cross-examined by the counsel for the respondents respectively. Said deposition was reduced to writing by my clerk, under my direction, in my presence, and, in the presence of the counsel of said parties, was read to said deponent and signed by him; after which he made solemn oath to the truth of the same.

The deponent residing in the State and district of Connecticut is the reason for taking this deposition.

Reasonable notice of the time and place of taking the same was given to the respondents, who were present as above stated.

[L. P. W., ex'r.] In witness whereof I have set hereto my name officially this 29th day of Nov., A. D. 1869.

Attest: LOREN P. WALDO,
Examiner.

579 EXHIBIT A.

Circuit court of the United States for the district of Maryland.

HORACE H. DEY ET AL.
vs.
JOHN STILLMAN AND OTHERS.

THE SAME
vs.
JOHN STILLMAN AND OTHERS.

In equity. On motion for preliminary injunction.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, ss:

CHARLES B. MERRIMAN, being duly sworn, says that for over fifteen years last past he has been engaged in the manufacture of rubber suspenders, as a member of the Hotchkiss & Merriman Manufacturing Company and the American Suspender Company; that about the years 1844 and 1845 deponent's company made suspenders of an unusually elastic kind by weaving fibrous matter over strands of rubber unvulcanized while in a state of tension. Such suspenders were made and were sold by deponent in the different markets in large quantities as and by the name of Woven Shirred Suspenders, in contradistinction to suspenders made by deponent's company at the same time out of cemented shirred goods purchased from the Naugatuck Company, that suspenders made from goods known and called Shirred Suspenders.

CHA'S B. MERRIMAN.

Sworn to before me this 25th day of March, 1859.

W. J. A. FULLER,
A Notary Public, duly commissioned and sworn, and dwelling in the city and district aforesaid.

580 In testimony that the aforegoing is a true copy of the original on file among the records and proceedings of the district court of the United States, I hereto subscribe my name and affix my seal of the said circuit court this twenty-fourth day of June, anno Domini 1869.

[SEAL.] JA'S W. CHEW,
Clerk District Court.

Cost, $75.

EXHIBIT B.

And I was attended by CHARLES B. MERRIMAN, of Waterbury, Connecticut, a witness of lawful age, who, being by me duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, deposes and says as follows:

11. To the eleventh direct interrogatory the witness saith: My name is Charles B. Merriman; age, about fifty-four years; residence, Waterbury, Connecticut; occupation, India-rubber manufacture.

12. To the twelfth direct interrogatory he saith: I have been engaged as a manufacturer of such goods for the last seventeen years, at Waterbury, Connecticut; the kind of goods I have manufactured were principally webbing, suspenders, shoulder-braces, gaiters, &c. They were all made by weaving.

13. To the thirteenth direct interrogatory he saith: I have manufactured them for seventeen years, as before stated, and have been familiar with them before that time.

14. To the fourteenth direct interrogatory he saith: They were similar to the annexed samples, but were not made of vulcanized rubber. I remember seeing such goods first in 1843.

15. To the fifteenth direct interrogatory he saith: They have always.

16. To the sixteenth direct interrogatory he saith: Where the fabric is drawn up in a crumpled form by the India rubber.

581 17. To the seventeenth direct interrogatory he saith: They designate the appearance of the goods.

18. To the eighteenth direct interrogatory he saith: Of course they are.

19. To the nineteenth direct interrogatory he saith: I have sold both cemented and woven goods in the market as shirred goods.

20. To the twentieth direct interrogatory he saith: They were. I can't fix the date when I first saw such goods; but I know that I saw imported woven suspenders before and made such myself in 1843. So far as I know, there is no difference in the properties and uses of such goods and the properties and uses of like goods made by cementing instead of by weaving or by sewing.

103. To the one hundred and third direct interrogatory he saith: I have answered this question in a previous deposition, which I will repeat in substance here: For seventeen years last past I have been engaged in the manufacture of rubber suspenders, as a member of the Hotchkiss and Merriman Manufacturing Company and the American Suspender Company. About the years 1844–5 our company made suspenders of an unusually elastic kind by weaving fibrous matter over strands of rubber, unvulcanized, while in a state of tension. Such suspenders were made and were sold by me in the different markets in large quantities as and by the name of Woven Shirred Suspenders, in contradistinction to suspenders made by our company at the same time out of shirred goods purchased from the Naugatuck Company. Suspenders made from goods so purchased and said woven suspenders were both known and called "shirred" suspenders. I am confident that the boxes containing those suspenders were labeled "shirred suspenders," and the cartons containing the gaiters made at that time, or about that time, were labeled "corrugated elastics." I hand to the commissioners two of such labels so used by us, to be annexed hereto and marked Nos. 117 and 118. I also hand him a sample of webbing, marked

582 No. 119, used for these corrugated elastics. I also hand him a sample of webbing, marked No. 120, subsequently made for the same purpose by us.

CHA'S B. MERRIMAN.

Examinations taken, reduced to writing, and by the witness subscribed and sworn to before me this first day of May, 1860.

P. W. OSTRANDER,
Commissioner.

Cross-examination:

14. To the fourteenth cross interrogatory he saith: I was engaged in mercantile business up to 1843, and after that I added the India rubber manufacturing.

15. To the fifteenth cross-interrogatory he saith: I have already so much of the question as I can reply to without reference to my books, which I have not got with me.

16. To the sixteenth cross-interrogatory he saith: I have already answered the question.

17. To the seventeenth cross interrogatory he saith: I know nothing about it beyond what I have already stated.

18. To the eighteenth cross-interrogatory he saith: I was acquainted with cemented shirred goods before 1846. I purchased large quantities of piece goods of the Naugatuck India Rubber Company and manufactured them into suspenders.

19. To the nineteenth cross interrogatory he saith: I suppose it was.

20. To the twentieth cross-interrogatory he saith: That question is answered by my last answer.

21. To the twenty-first cross interrogatory he saith: I had no knowledge of the goods previous to 1842.

22. To the twenty-second cross interrogatory he saith: I do.

23. To the twenty-third cross-interrogatory he saith: I do.

583 24. To the twenty-fourth cross-interrogatory he saith: I can't give the names.

25. To the twenty-fifth cross-interrogatory he saith: They were manufactured both by cementing and by weaving; they were more elastic.

26. To the twenty-sixth cross-interrogatory he saith: Yes.

27. To the twenty-seventh cross-interrogatory he saith: I don't know when M'r Goodyear did invent and put into market shirred goods.

28. To the twenty-eighth cross-interrogatory he saith: India-rubber suspenders.

29. To the twenty-ninth cross-interrogatory he saith: I know they were manufactured at Middletown and Waterbury.

30. To the thirtieth cross-interrogatory he saith: They were by our company.

31. To the thirty-first cross-interrogatory he saith: Yes, somewhat similar.

32. To the thirty-second cross-interrogatory he saith: Yes, it was 1844.

33. To the thirty-third cross-interrogatory he saith: Not to my knowledge.

34. To the thirty-fourth cross interrogatory he saith: Not to my knowledge.

35. To the thirty-fifth cross interrogatory he saith: Not to my knowledge.

36. To the thirty-sixth cross interrogatory he saith: I so understand it.

37. To the thirty-seventh cross interrogatory he saith: I can't say that it was.

38. To the thirty-eighth cross-interrogatory he saith: No; I never had any claim about it.

39. To the thirty-ninth cross interrogatory he saith: When they came into market they did compete with the woven goods.

40. To the fortieth cross-interrogatory he saith: Yes.

584 41. To the forty-first cross-interrogatory he saith: Yes.

42. To the forty second cross-interrogatory he saith: They were sold as shirred goods.

43. To the forty-third cross-interrogatory he saith: Yes; as one was woven and the other cemented.

44. To the forty-fourth cross-interrogatory he saith: I do.

136. To the one hundred and thirty-sixth cross-interrogatory he saith: No.

137. To the one hundred and thirty-seventh cross-interrogatory he saith: No.

138. To the one hundred and thirty-eighth cross-interrogatory he saith: No.

139. To the one hundred and thirty ninth cross-interrogatory he saith: No.

140. To the one hundred and fortieth cross-interrogatory he saith: No.

141. To the one hundred and forty-first cross interrogatory he saith: No.

CHARLES B. MERRIMAN.

Examination taken, reduced to writing, and by the witness subscribed; sworn to before me this 1st day of May, 1860.

P. W. OSTRANDER,
Commissioner.

At an examination of witnesses in the suit of Charles Goodyear and William Judson against Horace H. Day before me this first day of
585 May, 1860, the samples and labels hereto annexed, marked P. W. O. (two samples and two labels), were produced by the witness, Charles B. Merriman, and by him deposed to at the time of his examintion before me, and made by me, Nos. 117, 118, 119, and 120.

P. W. OSTRANDER,
Commissioner.

CHA'S B. MERRIMAN.

A copy.
[SEAL.] KENNETH G. WHITE, *Clerk.*

(Sample.) (Sample.)

Exhibit Y Y, L. P. W.

Direct interrogatories:

To Owen G. Warren, Townsend Cox, George W. Vesey, Marcus Leutezinger, Geo. B. Tompkins, John M. Hinds, Samuel R. Syms, Henry V. Allien, and U. P. Rogers, all of the city of New York; Charles Merriman, of Connecticut; A. Garfield, Eddy, George G. Hail, A. J. Bowers, Green, George H. Talbot, H. H. Wildman, H. H. Hudson, James S. Hudson, C. C. Flagg, Lucien N. Perry, Cornelius E. Cummings, John V. Hill, Benjamin H. Gladding, J. C. Brennington, all of Providence, Rhode Island; Stephen William Smith, and Frederick C. Wagner, all of the city of New York; John Helm, of New Brunswick, New Jersey, and Henry G. Tyer, of, in, or near Stoneham, Massachusetts:

11. Q. What is your name, age, residence, and occupation?

12. Q. Have you or not, at any time, and if so, where and for how long a time, been engaged in the sale or use of elastic India-rubber goods, or

lastic goods of which India rubber was a component part? If yea, specify all the kinds of goods, their uses, and how they were made.

586 13. Q. State how long the various kind of goods specified by you, in your answer to the 12th interrogatory, have been known to the trade and in the market, and how long you have been personally familiar with the same.

14. Q. State whether or not the first of such elastic goods seen by you were like any, and if so, which, of the annexed samples, and state when you first saw such goods.

15. Q. State whether or not, goods similar to the annexed samples have ever been sold or purchased to your knowledge as "shirred goods" or as "corrugated goods."

16. Q. State the meaning in the elastic India-rubber trade and market of the words "shirred" and "corrugated."

17. Q. State what such words "shirred" and "corrugated" designate; whether the appearance of the goods or properties and qualities.

18. Q. State whether or not the annexed samples and goods similar thereto, are properly styled or called "shirred goods," or "corrugated goods," as those terms are used by persons dealing in the elastic India-rubber goods.

19. Q. State whether or not in the trade or in the market, the appellation of "shirred" or "corrugated" as applied to elastic India-rubber goods, depends in any way upon the fact that such goods are made by sewing or by weaving, or by cementing.

20. Q. State whether or not, to your knowledge, elastic India rubber goods, in which the covering of the India rubber threads was made or secured by weaving or by sewing, were in use prior to the year 1844; and if yea, when first to your knowledge, and what were such goods, and state the difference between the properties and uses of such goods, and the properties and uses of like fabrics made by cementing instead of by weaving or by sewing.

Cross-interrogatories:

Cross 14. To Owen J. Warner, Townsend Cox, Geo. W. Vesey[1]

587 Marcus Luetzinger, Geo. B. Tompkins, John M. Hines, Samuel R. Syms, U. P. Rogers, Charles Merriman, A. Garfield, Eddy, Geo. C. Hail, A. J. Bowes, Greene, George H. Talbot, H. H. Wildman-H. H. Hudson, James S. Hudson, C. C. Flagg, Lucien N. Perry, Cornelius E. Cummings, John V. Hill, Benjamin H. Gladding, J. C. Bullington, Stephen W'm Smith, Frederick C. Wagner, John Helm, Henry G, Tyre. In what business were you engaged from 1842 till December 5th, 1846?

Cross 15. State where you carried on that business, in what street and what number; whether you were in partnership with any other person or persons, and, if so, with whom; give their names and their present residence if you know it; if you were in the business of buying, selling, or manufacturing India-rubber goods at that time; state what class of India-rubber goods you bought, sold, or manufactured; name the person or persons from whom you bought your India-rubber goods; give the name of your customers to whom you sold them, as many as you can recollect; if you kept books of account; where are they; will you produce them, and refer to them for the names of your customers and of the merchants from whom you bought?

Cross 16. If you were not engaged in any business on your own account from 1844 till December 5th, 1846, state how you were employed during the whole of that time; by whom you were employed; where

that person now is, if you know; in what business, trade, or occupation you were employed; in what place, street, and number of street you were so employed; name the persons who were employed with you at that time in the same shop or establishment, and where those persons or any of them now live, if you know.

Cross 17. In the contract, whose meaning you called upon to construe, the following recital is made:

"Whereas the said Charles Goodyear at the time of the execution of these presents, has, owns, and controls all and every right and privilege granted or intended to be granted to him, the said Charles Good-
588 year, by the several letters patent issued by the United States of America to him, the said Charles Goodyear, as follows, that is to say: Letters patent for new and useful improvements in the manner of preparing fabrics of caoutchouc or India rubber, bearing date the fifteenth day of June, in the year one thousand eight hundred and forty-four; letters patent for improvement in the mode of preparing caoutchouc with sulphur for the manufacture of various articles, bearing date the twenty-fourth day of February, one thousand eight hundred and thirty-nine; letters patent for a new and useful manufacture of goods, which he denominated corrugated or shirred India rubber goods, bearing date the ninth day of March, in the year one thousand eight hundred and forty-four; letters patent for a new and useful manner of constructing a machine for manufacturing what he denominated corrugated or shirred India-rubber goods, bearing date the ninth day of March, in the year one thousand eight hundred and forty-four."

Do you know, of your own knowledge, whether the statement therein contained, that M'r Goodyear denominated a certain manufacture therein referred to, "corrugated or shirred India-rubber goods," was true or not at the time it was signed by Horace H. Day and Charles Goodyear, to wit, in December, 1846?

18. Were you acquainted with the article patented by M'r Goodyear and referred to in said recital, at any time before December, 1846; if so, what was the extent of your acquaintance with it, did you buy it, sell it, or manufacture it; if you bought it, from whom did you buy it, in what quantities did you buy it in each year; if you sold it, for whom did you sell it, in what quantities did you sell it, and to whom did you sell it; if you manufactured it, how much of it did you manufacture before December, 1846, where did you manufacture it, and how did you dispose of it after you manufactured it?

Cross 19. Was not the name by which the manufacture patented by M'r Goodyear, March 9th, 1844, was known "shirred goods," or "shirred or corrugated goods," or "corrugated or shirred India-rubber goods"?

589 Cross 20. If you say that such was not the name of that manufacture in 1846, or before it, among dealers and manufacturers of India-rubber goods, state what the name of that manufacture was, who told you of such other name, what merchants or manufacturers did you ever hear call them by such other name, and upon how many occasions and what places did you ever hear that manufacture called by such other name?

Cross 21. Did you ever before 1842, and before the introduction into the market of the manufacture described in said recital, know of any goods of any kind that were sold in the market and that were called by merchants and manufacturers "shirred goods," or "shirred or corrugated goods," or corrugated or "shirred India-rubber goods"; if so, describe the goods, of what material were they made, by whom were

they sold, and what merchants or manufacturers did you ever hear call them by either of the said names?

Cross 22. Do you not know that for several years before 1846 suspenders were imported, manufactured, and sold in the United States, composed of strands of India rubber, interwoven with threads of cotton, silk, or other fibrous material, in such a manner as to produce an elastic fabric, by means of the elasticity of the India-rubber warp threads thus employed?

Cross 23. Do you mean to swear that those suspenders or elastics were known among merchants and manufacturers before December 5th, 1846, as "shirred goods," or "shirred or corrugated goods," or corrugated or shirred India-rubber goods?

Cross 24. If you so swear, name the merchants who bought and sold those articles under any of those names; where did they carry on their business—where are they now, if you know?

Cross 25. If you swear that before December, 1846, elastic suspenders, or other articles produced by weaving strands with fibrous threads, were known in the market as "shirred goods," or "shirred or
590 corrugated goods," or "corrugated or shirred or corrugated India-rubber goods," describe how such goods were manufactured, wherein they differed from woven elastic goods that had been in use several years before, and by what particularity or distinction they might be known.

Cross 26. (To Charles Merriman.) Were you not engaged directly or indirectly before 1846 in the manufacture of elastic suspenders, made by weaving strands of India-rubber with fibrous threads?

Cross 27. Was not that manufacture carried on under the name of Hotchkiss & Merriman, or under some other name, before M'r Goodyear invented and put into the market "shirred goods"?

Cross 28. What was the name by which these suspenders manufactured in the beginning of the manufacture by Hotchkiss & Merriman were known?

Cross 29. Did you not know that before 1846 suspenders of India rubber, woven with fibrous threads, were manufactured in New Haven and other places in New England?

Cross 30. Were those suspenders known in the market bought and sold under the name of "shirred goods," or "shirred or corrugated goods," or "corrugated or shirred India-rubber goods," or any of those names?

Cross 31. Were not those suspenders of similar manufacture to that described imported from abroad, and well known in the market for many years before 1844?

Cross 32. Do you not recollect when the manufacture denominated by M'r Goodyear "corrugated or shirred India-rubber goods" first came into the market?

Cross 33. Was not that in the year 1842 or 1843?

Cross 34. Did not those goods and articles made from them go under the name of "shirred goods," or "shirred or corrugated goods," in the India-rubber trade at that time?

Cross 35. Was not that name used at that time when those goods first came into the market exclusively to designate the manufacture thus introduced by M'r Goodyear?

Cross 36. When those goods first came into the market, was
591 the name "shirred goods," or "shirred or corrugated goods," used indiscriminately as well to describe them as to describe the woven suspenders at that time in common use?

Cross 37. Was not the term "shirred goods," or "shirred or corrugated goods," used at that time to distinguish this new manufacture of M'r Goodyear from the gum-elastic suspenders then in common use?

Cross 38. Did you ever hear it claimed by any one, there or at that time, that this new manufacture of "shirred goods" was substantially the same thing as the woven suspenders then made by you and others?

Cross 39. Did not suspenders of shirred goods rapidly come into favor and use after their first introduction, and did they not seriously compete in the market with woven suspenders?

Cross 40. Did not the shirred goods so far interfere with your business that you began to imitate the appearance of shirred goods in your woven suspenders?

Cross 41. Did you not make that imitation of "shirred goods" for the purpose of taking advantage of the reputation that "shirred goods" had gained?

Cross 42. Were not those suspenders thus made, sold as imitations of "shirred goods"?

Cross 43. Was there not a clear and well-known distinction between these imitation "shirred goods" and the real "shirred goods" made under M'r Goodyear's patent?

Cross 44. Do you mean to swear that in 1846, or before that time, suspenders, or other elastic articles made by weaving strands of India rubber with fibrous threads, were known and called among merchants and manufacturers "shirred goods," or "shirred or corrugated goods"?

Cross 45. To George W. B. Tompkins: Were you not called as a witness on the part of Horace H. Day, in the suit of Goodyear vs. Day, in the circuit court of the United States, in New Jersey, and were you not examined in behalf of said Day, in said suit, in 1842?

Cross 46. Look at the following copy of a deposition in that case, and say whether you did not give that deposition.

A copy.

KENNETH G. WHITE, *Clerk.*

592 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

NEW YORK, *March* 1*st*, 1870—at 10 a. m.

Present, counsel for both parties.

Cross-examination of W'm Smith resumed:

Cross 292. You say in your answer to cross 240, that your engagement with Dodd & Wakeman was to make fine suspender webbing like the French. Did it not also have reference to the making of woven webbing for shoe-gores, such as was then imported?

A. There was no such goods then imported at the time, nor was there any made to my knowledge, in any part of the world. I told Dodd & Wakeman that I intended to get out a patent for making woven shoe-goring, and at their request I attempted to make it, but there was no proper materials to be bought in the market, and the motive power was so irregular that I failed to produce a marketable article. And I had no knowledge that any of the said goods were ever offered in the market for sale.

Cross 293. Was nothing said to Dodd & Wakeman by you regarding imported woven web for shoe gores?

A. Not a word. Such an idea never entered into my head, nor theirs either.

Cross 294. When was your attention first called to the fact that woven web for shoe-goring was imported?

A. To the best of my recollection it was in 1855.

593 Cross 295. Where, and by whom?

A. I cannot say by whom. I began to hear it talked about both in Boston and New York, but who imported it, or who had it, I cannot say.

Cross 296. Who first talked about it to your knowledge?

A. If my memory serves me correctly it was a man by the name of King, of the firm of King & Co., of Washington street, Boston; I think he showed me boots with some of it in, but whether the boots were imported with the goring in, or the goring imported and put in the boots, I can't say.

Cross 297. What was King & Co.'s business and what was the number of their place of business on Washington street?

A. They kept a large shoe store for the finer class of work usually; the number I don't know.

Cross 298. Was the goring shown you by Mr. King similar and woven in accordance with your reissued patent?

A. I don't know that I know M'r King personally; the goring was made somewhat similar to my patent, but of finer and better material than any that I could procure in this country; the elasticity of it was checked by a white cotton back, not properly arranged and woven to allow a free contraction of the elastic cords.

Cross 299. How were the elastic cords covered?

A. On the back they were covered with a white cotton warp running longitudinally with the rubber; on the surface side the goods were covered with a silk web only, and the same amount of silk as on the surface was on the back part of the goods, and covered and hid from view by the white cotton warps.

Cross 300. When did you first see any imported woven elastic shoe-goring constructed in accordance with your reissued patent B?

A. I think it was in 1857 or 1858, somewhere about that time.

Cross 301. Where, and in whose possession?

594 A. If I recollect aright, it was either in Pearl street or Portland street, or somewhere about there, in Boston, in the hands of M'r Nathan Nichols, I think, or some other person.

Cross 302. Was it single or Union web?

A. It was of both kinds.

Cross 303. Can you now recollect the name of your agent in London, who had his place of business near the "great lamps opposite the post office"?

A. I do not, but if you are anxious to know I think I can put you on a line to discover it.

Cross 304. Can you recollect the name of the landlords mentioned in your answer to cross 274, or of the street where your factory was?

A. The landlord of the warehouse which I occupied in Church street I do not recollect, but one circumstance which has come to my memory since is this, that the landlord had a son employed as a salesman in the warehouse of John and Nathaniel Phillips & Co., which was nearly opposite my warehouse, who was rather wild and unsteady; and my impression is that he came and drew a quarter's rent from me, in his father's name, and appropriated the money to himself. As far as the factory was concerned, I do not recollect the street, but believe it was

on a line with Swan street and Shude Hill, and it was an old cotton factory, I think the first ever erected in Manchester. When I left Manchester I sold my interest out to my partner, and left him in the possession, both of the warehouse and the factory; what has become of him or the warehouse, or the factory, I don't know, as I have never heard of them, and had no correspondence with him. I said in my previous examination that I thought his name was John; I now recollect that it was George Lambert. I would further say, that if counsel wishes to obtain the name of my former agent in London, I will give him the information as to the course I should pursue if I wanted particularly to find him out.

Cross 305. Are you familiar with the contents of your affidavit
595 in the Patent Office, wherein you state that you sold woven shoegoring made according to your patent in 1850?

A. I can't say that I am familiar with it, but I detected a clerical error in it, and in two other affidavits made about the same time, as I have before stated in my cross-examination, and intend to produce evidence upon it as soon as the defendants will give me time to do so. As I previously stated, I called my counsel's attention to the fact several months ago.

Cross 306. In 1850 or 1851, or whenever it was that said sales were made, were you not ignorant of the fact that the law required an application for a patent to be made within two years aftr the sales?

A. I was; and of all else concerning patent law.

Cross 307. When did you first find out the fact?

A. That I can't say. I don't recollect.

Cross 308. State as near as you can.

A. I have no idea, and I don't believe it to be a fact now; according to the rulings of the court, as far as I understand the fact to be, a mere sale, as an experimental trial of the utility of goods, is not the abandonment of patent rights to the public contemplated by the law.

Cross 309. Did you not first ascertain that an application should be made within two years after the invention was put on public use, within a few months, and did not that call your attention to the affidavits aforesaid in the Patent Office?

A. I did not, and it did not; my universal rule has *has* been during the course of this trial, and will be to its end, to have the truth on my side appear just as it is, and to test the idea if truth and simple truth is not a match for all the perjury and forgery which has been brought to bear against me in these suits.

Cross 310. How long have you known that an application should be made within two years after public use?

A. I can't say how long; I suppose I got the information from looking my case up in different authorities.

Cross 311. State as near as you can.

596 A. I have; I can't recollect.

Cross 312. Have you known it ten years?

A. I believe not.

Cross 313. Have you known it eight years?

A. That I can't say; I can't fix a date.

Cross 314. Have you known it six years?

A. I can't say. I have stated the truth, and can't say anything further.

Cross 315. Do you believe you have known it six years?

A. I can't state anything more than I have done; I can't recollect. I suppose it came on me by degrees.

Cross 316. Do you believe you have known it five years?

A. I have nothing further to say on the question.

Cross 317. Do you believe you have known it four years?

A. I have already answered.

Cross 318. Do you believe you have known it four years?

A. I have already answered the question.

Cross 319. In answer to what interrogatory have you answered this question?

A. I have answered all to the best of my recollection.

Cross 320. Do you decline to say whether you believe you have known it four years?

A. I do not decline to say anything that I know to be truth, but I decline saying anything that I have doubts about. In my extension of my patent, three years ago this month, I stated, under oath, when I invented the patent, also the time I introduced it into the market; any affidavits in which by inadvertence the year of the Lord has been made 1850 instead of 1851 is merely a clerical error.

Cross 321. Have you no belief whether the information inquired about did or did not come to you more than four years ago?

A. As I am under oath in this case I wish to speak from facts and not from impressions; but my impression strongly is that I had
597 no definite knowledge of it when I took out my extension; but I say this only from impression.

Cross 322. In that event your affidavits filed in the Patent Office were made unbiassed by any such consideration of information, were they not?

A. The knowledge that I have on my mind, not impression, is, that I intended and did say 1851, and it was merely a clerical error of those who drew up the affidavits to write 1850 for 1851; which would be in the tenor of and according to all my previous affidavits on the subject.

Cross 323. Were they not made in ignorance of, and unbiassed by, the knowledge inquired for?

A. I can't say anything about what knowledge the person who drew them up had about the fact; he never stated anything to me about it. I requested him to draw me up certain affidavits as to when I first introduced the goods into the market, which he did, and which were filed in the Patent Office, and I did not detect the error until I examined the files in the Patent Office since the reissue of my patents.

Cross 324. At the time your affidavit was made, were you not then ignorant of the fact that the application for a patent should be made within two years after the patentable article was put upon the market?

A. I was not. My information on the subject was as good then as it is now.

Cross 325. How long before that, according to your best recollection, did you have that information?

A. I think but a very short time before, according to my best recollection. I am speaking from my impressions, not from facts that I know. I wish to add to my answer last given above to cross 324, "except in one particular, by reading the legal authority lately reissued by Judge Fisher, of the supreme court District of Columbia, that the ruling of the court is somewhat qualified, that circumstances may arise in making experiments and putting some goods on the market which is not abandonment to the public use of the patentable article by the patentee, more than two years before the application for a patent."

598 Cross 326. What application of that decision do you make to your case?

A. I do not make any application to my case, but merely state it as a point of argument, that presuming that a patentee sold goods more than two years previous to his application for a patent, the court in equity will take all the circumstances attendant on it into consideration.

Cross 327. What is the name of the case in which that decision is made, and where found?

A. That I hadn't time to look into. I happened to open the volume and hit upon that case. I only read the decision, intending to look farther into the matter at another time.

Cross 328. In what volume was it, and where did you see it?

A. I think it was Vol. II of Fisher's Reports, and I saw it in the office of the Hon. T. A. Jenckes.

WM SMITH.

In consideration of the scope of the testimony in cross-examination, and its applicability to the other suits on patent for the fabric, to wit, W'm Smith vs. J. T. Whitehouse and others: The same vs. Nathan Nichols, it is now agreed between the parties that the above testimony may be used by either party to the said two last-named suits, and it shall not be an objection to said testimony that it was not entitled in said cases.

KELLER & BLAKE,
For Complainant.
BENJ. DEAN,
For Respondents.

Adjourned until further notice.

599 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
v.
THE GLENDALE ELASTIC FABRICS COMPANY.

UNITED STATES OF AMERICA,
District of Columbia, County of Washington, ss:

OCTOBER 27, 1869.

Be it remembered that on this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, Philo B. Stilson,
600 a Commissioner of the United States for the District of Columbia, under all the several acts of Congress providing for and authorising the appointment of commissioners, and prescribing "the powers and duties of the same," duly appointed by the supreme court of the District of Columbia, did call and cause to be, and personally appear before me, at my office, No. 4 Louisiana avenue, in the city of Washington, in said district, George E. Brown, to testify and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy now depending and undetermined in the United States circuit court of the southern district of New York, in equity, wherein William Smith is complainant, and J. T. Whitehouse, Nathan Nichols, Glendale Elastic Fabrics Company, and Ithiel F. Farnum, are defendants. The said complainant appearing in person, and the said defendants appeared by Benjamin Dean, esq., their attorney.

And the said George E. Brown being about the age of 29 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy

aforesaid, I did carefully examine the said George E. Brown, and he did thereupon depose, testify, and say as follows:

1. Q. Please state your occupation and residence, and how long you have been engaged in that business?

A. My occupation is a patent agent; I have been engaged in that business for four years, and my residence is the city of Washington.

2. Q. Have you been connected in business with any one during that time, and if so, with whom and during what period of time?

A. I was in partnership with H. W. Beadle, from July, 1866, to November, 1867.

3. Q. Please look at a certified copy of an affidavit from the Patent Office, signed by Brown and Beadle, filed Oct. 18th, 1867, and say if it is a true copy of an affidavit which you put on file?

(Objected to as incompetent.)

601 A. I have no recollection of having filed the document, but presume we did.

4. Q. Have you any recollection of swearing to it before Edmund F. Brown?

A. I have none.

5. Q. When you make an affidavit, is it customary for you to leave out the date of the affidavit?

A. It is not.

6. Q. Was not the said affidavit drawn up by you or your partner?

A. I do not know whether it was or not; I cannot speak from recollection.

7. Q. Did you ever read the said affidavit?

A. I have no recollection of having read it prior to to-day.

8. Q. Did you ever sign such an affidavit?

A. I have no recollection of having signed it.

9. Q. Will you swear you never did sign it?

A. I will not.

10. Q. Will you state, if you know, why the date was not put to that affidavit?

A. I do not know why it was not put to it.

11. Q. In the above affidavit it is stated that certain parties reside at a distance, and you ask for ten days' time to communicate with them and put in testimony. State the names of these parties, and where they resided, thus referred to?

A. The parties by whom we were employed were Lovering, Dean & Co., of New York City; I have no recollection of any other parties.

12. Q. Did you receive from these parties the affidavit of Thomas Sawyer, with three exhibits to be filed in the Patent Office?

A. We received from E. N. Dickerson, associate counsel with us in the case, certain exhibits of web fabric, but whether we received any affidavit I cannot recollect.

13. Q. What disposition did you make of those exhibits that you received?

602 We filed them in the Patent Office.

14. Q. What persons called upon you at your office in Washington to consult with you in relation to the opposition to the issue of my patent?

A. No one but E. N. Dickerson.

15. Q. Will you please to look at a certified copy of an argument, filed in the examiner's room in the Patent Office, presented to you, and state if that is the same put in by you, and endorsed on the back "Brown and Beadle," in pencil.

A. It looks like the same, and I presume it is.

16. Q. Of whom did you receive that argument?

A. From E. N. Dickerson.

17. Q. What description of drawing was in the drawing with the argument that you received from E. N. Dickerson?

A. I think it was a sketch in tracing muslin.

18. Q. Look at the drawing with the certified copy, and say if you ever saw that before?

A. I think it is a copy of the drawing we filed.

19. Q. Can you swear that the whole of that copy of drawing was filed in the Patent Office.

A. I cannot.

(A printed pamphlet styled "Objections to the reissue of patent of William Smith," dated April 5, 1853, by Brown and Beadle, solicitors, offered in evidence, and marked Exhibit K., P. B. Stilson, Commissioner, Oct. 27, 1869.)

20. Q. Please take Exhibit K, and state what you know about its publication?

(Objected to by defendants' counsel.)

A. This pamphlet was written by E. N. Dickerson in our office, and filed in our name with our permission.

21. Q. Look at the signature, and say if you signed it with the firm name?

603 A. I do not know, but suppose it was; I doubt whether we signed the manuscript at all.

22. Q. Did you ever give any one else authority to put your name to it; if so, who?

A. We gave M'r Dickerson authority to file a printed pamphlet in our name, but nothing was ever said, as far as I am aware, about signing the manuscript.

23. Q. When was that printed pamphlet filed?

A. I think in October, 1867.

24. Q. Before you gave M'r Dickerson authority to use your name, did you compare the printed copy with the manuscript on file in the Patent Office?

A. We did not.

25. Q. Am I to understand that you gave authority to M'r Dickerson to put your name to a document that you did not know the contents of?

A. You are not to understand anything of the sort.

26. Q. Can you say that the Exhibit K is a correct copy of the manuscript on file in the Patent Office?

A. I cannot.

27. Q. Do you know that in the printed copy there are many additions and omissions not contained in the written manuscript?

A. I was not aware that there was any difference.

28. Q. How came the signature of your firm to the printed copy which is a false representation of the original?

A. We gave M'r Dickerson authority to put it there, not supposing he would make any change.

Direct examination of the witness here closed.

(No cross-examination.)

GEO. E. BROWN.

Subscribed and sworn to before me this 27th day of October, A. D 1869.

PHILO B. STILSON, *Com'r.*

604 OCT. 27th, 1869.

HEUGH W. BEADLE, being about the age of 27 years, and having been first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

1. Q. What is your occupation and residence?

A. Patent agent; and residence in Alexandria, Va.

2. Q. Have you been connected in business with any one; if so, when, and during what time?

A. I have been connected in business with George E. Brown, in 1866, 1867; I think from July, 1866, to November, 1867, but am not positive.

3. Q. Please look at a certified copy of an affidavit from the Patent Office, signed by Beadle and Brown, and state what you know about it.

A. I think I prepared the affidavit of which this is a copy, and made oath to it.

4. Q. At whose request did you prepare it?

A. At the request of E. Thomas Sawyer, who represented the Glendale Elastic Fabrics Co., as I recollect it.

5. Q. Did M'r Thomas Sawyer wait upon you at your office to request you to do so?

A. I think not; but think it came by mail; possibly it came from Lovering & Co., N. Y.

6. Q. Have you got that communication; and, if so, will you attach a sworn copy of it to your deposition?

A. I do not know, but think I have, and will do so if required.

(Complainant requires it.)

7. Q. Was you ever visited by E. H. Sawyer, brother of E. Thomas Sawyer, at your office?

A. I think not.

8. Q. Did he ever communicate with you by letter?

A. I think not.

9. Q. Of whom did you receive the affidavit of E. T. Sawyer, and the exhibit accompanying them, filed in the Patent Office, Oct. 28th, 1867?

605 A. I think they came from Stoddard, Lovering & Co., of N. Y. City, but they might have come from E. T Sawyer.

10. Q. Have you taken any active part in resisting the reissue of my patent since the dissolution of your partnership with M'r Brown?

A. I think not, but my memory is not clear.

11. Q. Are you aware that M'r Brown, your late partner, took any active part since the dissolution?

A. I do not certainly know, but feel very sure that he has not.

12. Q. Did you put on file yourself the affidavit of E. T. Sawyer, and exhibits, in Oct. 28th, 1867?

A. I put on file such affidavit and exhibits, but am not sure about the date.

13. Q. Have you any knowledge of what has become of the said affidavit and exhibits so filed in the Patent Office?

A. I have not.

14. Q. Of whom and by whom did you receive your pay for services rendered by you?

A. I cannot tell.

15. Q. Can you say that you did not receive it of M'r Dickerson?

A. I can.

16. Q. Can you say that you did not of Stoddard, Lovering & Co.?

A. I cannot tell. We transacted business with them, and with the

Glendale Elastic Fabrics Co., and I cannot tell who paid for these services.

17. Q. Was you ever waited upon at your office by John A. Wiedersheim, and notified by him that complainant was going to take evidence in New York City?

A. I do not remember that such was the case.

18. Q. Did you consider yourself as personally in actual opposition to the reissue of my patent?

A. Yes. We were retained to oppose it, and were paid for it.

The direct examination here closed.

606 M'r Dean, disclaiming any appearance for any party except defendants Whitehouse and Nichols, cross-examined said witness as follows, viz:

Cross 1. Do you remember the exhibits inquired about in your direct examination, as annexed to M'r Sawyer's affidavit, so as to describe them; if yes, please describe them as fully and as particularly as you can?

A. I think I do; I think the exhibits consisted of three pieces of webbing—one a long piece, and two short ones; one of the short pieces was marked as having been woven upon a loom with moveable warp threads, the other short piece was marked as having been woven upon a loom with stationary warp thread, and the long piece was composed of two kinds of weaving, one kind being in the centre, with the other kind at each end, the division between the two kinds being marked by a white thread; I think all of the pieces were identical in appearance, and but for the division by the thread in the long piece it would have been impossible to have detected the difference; one part of this was wove with stationary warp threads, and the other with moveable warp threads; I mean by moveable and stationary warp threads that in one case the Indian-rubber thread moved, and the other did not.

Cross 2. Do you remember the contents of M'r Sawyer's affidavit? and, if so, state it.

A. I remember a portion of the contents; M'r Sawyer made oath that he was superintendent of a mill in East Hampton, Mass., and that these samples were woven under his immediate superintendence, and that each piece was woven as he represented it, giving in detail the manner of weaving each piece, which was the same as I have stated in answer to the last question; this is according to my best recollection; I cannot state the language of the affidavit.

The cross-examination here closed.

On the redirect examination said witness testified as follows:

1. Q. Are you an expert in weaving, and do you understand the manufacture of elastic goods?

607 A. I am not an expert in weaving, but understand how they are made; have seen them made a great many times.

2. Q. Please describe how they were made—how those exhibits were made.

A. I do not know how they were made except as informed by the affidavits; I did not see them made.

3. Q. When you see a piece of woven elastic goods, have you a sufficient knowledge of the art to tell and describe how it was made?

A. I have not.

4. Q. You mention in your direct examination that you thought you never took any active part in opposition to the reissue of my patent after

the dissolution of the partnership with M'r Brown; cannot you say whether you did or did not do so?

(Objected to as irrelevant and as improperly reopening the direct examination.)

A. I do not remember.

5. Q. You spoke in your cross-examination of the exhibits put in with the affidavit of Sawyer; what were they composed of besides rubber?

A. They were shoe-gores, but I cannot state whether of silk or cotton.

6. Q. Do you not recollect that one of them was silk on one side and black cotton on the other?

A. I could not swear it was not so, but I do not remember it.

7. Q. Was not one of those exhibits before mentioned put in by Thomas Sawyer, the India rubber put on one heddle shaft and the non-elastic threads put on another heddle shaft, and woven and interlocked the same as plain weaving, and the India rubber thread lying in the same plain as the non-elastic threads?

A. I have before stated that I did not see the exhibits woven, and know nothing of the manner of weaving except as stated in the affidavit.

608 8. Q. Do you not think that a patent solicitor could see the difference if he was well posted in his business?

A. If there was a very marked difference in the two pieces of webbing, and the patent solicitor should happen to be an expert in weaving, he probably would detect it.

The testimony of the witness here closed.

(Signed) HEUGH W. BEADLE.

Subscribed and sworn to before me this 27th day of October, A. D. 1869.

PHILO B. STILSON,
Com'r.

OCT. 27th, 1869.

JOHN A. WIEDERSHEIM, being about the age of 27 years, and having been first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

1. Q. What is your residence and occupation, and how long have you been engaged in the business?

A. My residence is Washington; occupation, patent agent, and have been in that business about six years.

2. Q. Was you ever appointed an attorney by L. W. Serrell, of New York City, to look after the matter of the reissue of the patent of the complainant? If so, state what time and what year.

A. As a member of the firm of Wiedershiem & Co. I attended to various matters for that attorney, but our business for non-resident agents was so extensive that I do not now remember the case in question.

609 (Complainant here produced four exhibits, marked L, M, N, and O, P, and Q, which are herewith returned.)

3. Q. Was your firm employed to attend to the matter in the Patent Office of the reissue of the patent to William Smith?

A. I recognise the writing of all the exhibits except Exhibit O as that of one of my partners at that time, and therefore suppose that our firm was so employed.

4. Q. What was his name?
A. Said partner's name was A. A. C. Klaucke.
(Signed) JOHN A. WIEDERSHEIM.

Subscribed and sworn to before me this 27th day of October, A. D. 1869.

PHILO B. STILSON,
Com'r.

Exhibit L, P. B. S.—Oct. 27, 1869.

WASHINGTON, D. C., *Oct.* 21*st*, 1869.

DEAR SIR: Your favor of the 19th inst. came duly to hand, with power of attorney enclosed, as stated, which we filed. Saturday we had a lengthy interview with the Commissioner, and he decided that the thirty days in which opposition can be made begin from a week before the day of publication in the Scientific American. Smith's reissue being published on the 5th day of October, it has been decided that the thirty days began on the 28th of September, and are run out only with
610 the 28th of October, and that Dickerson, if he makes a statement of opposition, has become a party to the reissue.

The whole matter of the publication of the reissue to grant time for opposition is as yet in a terrible confusion, and as the Commissioner is not willing to definitely matters in regard to these reissues as yet, until he has seen more of it working, it is extremely difficult to lay down any rule by which to go. We send under official cover by to-day's mail the copy of the opposition statement.

We are of opinion that the whole matter turns merely upon technicalities, and if the claim is slightly differently worded all opposition will amount to nothing. This is the idea conveyed to our mind by conversation with the examiner. We gave M'r Smith three hours of close personal attention, for which we charge $10. We spent several hours on Saturday with the Commissioner and examiner, trying to settle the matter, and for this, including the copy sent to-day, we charge $10.

Very truly, yours,

WEIDERSHEIM & CO.

L. W. SERRELL, *New York City.*

Exhibit M, P. B. S.—Oct. 27*th*, 1869.

WASHINGTON, D. C., *Oct.* 24*th*, 1867.

DEAR SIR: The enclosed was received by us to day. We will inform you further to-morrow.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq., *New York City.*

611 *Exhibit N, P. B. S.—Oct.* 27*th*, 1869.

WASHINGTON, D. C., *Oct.* 25*th*, 1867.

DEAR SIR: Your favor of the 24th inst. is at hand. Brown and Beadle, for their client, are not parties to the opposition, nor is any opposition recognized in the case.

Their argument being only considered a statement of facts, such as they desire to present, without appearing in the case.

The examiner (Gregory, just appointed full examiner, and very painfully careful and undecided) will not give a written decision as to there

being no opposition, but says that B. & B. are not entitled to notice of testimony to be taken. Their argument, however, will have weight with the examiner, and if you wish to file testimony you had better telegraph us to-morrow row. He may take up and decide the reissue case without any statement from you refuting B. & B.'s argument. We had a lengthy interview with Gregory, and had to force him to a decision.

We charge your account with $2.50.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq.,
New York City.

P. S.—If you wish to file testimony or argument we will not ask for an extension of the thirty days, but merely give notice that we will file some argument bearing on the case, and ask examiner not to give decision till we can file it.

W. & CO.

612 *O, P. B. S. Oct.—27th, 1869.*

WASHINGTON, D. C., *Oct. 26th*, 1867.

DEAR SIR: Your telegram came to hand. Gregory promised not to finally act on the case until the papers you sent are filed.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq.,
New York City.

We will keep you informed of the progress of the case.

N. Y., *Oct. 18th*, 1867.

[By telegraph from Washington]

To LEMUEL W. SERRELL,
121 *Nassau.*

Smith here all right. Objections ruled out. Keep quiet about it.

WEIDERSHEIM & CO.

11 col. 44.

P, P. B. S.—Oct. 29th, 1869.

WASHINGTON, D. C., *Oct. 18th*, 1867.

DEAR SIR: Your telegram of yesterday came to hand after the Patent Office was closed. M'r Smith was here to-day, and we had an interview with the Commissioner, according to whose decision the opposition is ruled out.

M'r Smith ordered a copy of the opposition, and asked for a
613 delay of ten days in the examination to be able to refute any statement in the opposition which might make an impression on his (the examiner's) mind.

We will report further to-morrow.

Very truly, yours,

WEIDERSHEIM & CO.

Q, P. B. S.—Oct. 27th, 1869.

JOHN E. WEIDERSHEIM.

OCT. 27TH, 1869.

GEORGE W. GREGORY, J'r, being about the age of 26 years, and having been first cautioned and sworn to tell the truth, the whole truth, and

4. Q. What was his name?
A. Said partner's name was A. A. C. Klaucke.
(Signed) JOHN A. WIEDERSHEIM.

Subscribed and sworn to before me this 27th day of October, A. D. 1869.

PHILO B. STILSON,
Com'r.

Exhibit L, P. B. S.—Oct. 27, 1869.

WASHINGTON, D. C., *Oct.* 21*st*, 1869.

DEAR SIR: Your favor of the 19th inst. came duly to hand, with power of attorney enclosed, as stated, which we filed. Saturday we had a lengthy interview with the Commissioner, and he decided that the thirty days in which opposition can be made begin from a week before the day of publication in the Scientific American. Smith's reissue being published on the 5th day of October, it has been decided that the thirty days began on the 28th of September, and are run out only with
610 the 28th of October, and that Dickerson, if he makes a statement of opposition, has become a party to the reissue.

The whole matter of the publication of the reissue to grant time for opposition is as yet in a terrible confusion, and as the Commissioner is not willing to definitely matters in regard to these reissues as yet, until he has seen more of it working, it is extremely difficult to lay down any rule by which to go. We send under official cover by to-day's mail the copy of the opposition statement.

We are of opinion that the whole matter turns merely upon technicalities, and if the claim is slightly differently worded all opposition will amount to nothing. This is the idea conveyed to our mind by conversation with the examiner. We gave M'r Smith three hours of close personal attention, for which we charge $10. We spent several hours on Saturday with the Commissioner and examiner, trying to settle the matter, and for this, including the copy sent to-day, we charge $10.

Very truly, yours,

WEIDERSHEIM & CO.

L. W. SERRELL, *New York City.*

Exhibit M, P. B. S.—Oct. 27*th*, 1869.

WASHINGTON, D. C., *Oct.* 24*th*, 1867.

DEAR SIR: The enclosed was received by us to day. We will inform you further to-morrow.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq., *New York City.*

611 *Exhibit N, P. B. S.—Oct.* 27*th*, 1869.

WASHINGTON, D. C., *Oct.* 25*th*, 1867.

DEAR SIR: Your favor of the 24th inst. is at hand. Brown and Beadle, for their client, are not parties to the opposition, nor is any opposition recognized in the case.

Their argument being only considered a statement of facts, such as they desire to present, without appearing in the case.

The examiner (Gregory, just appointed full examiner, and very painfully careful and undecided) will not give a written decision as to there

being no opposition, but says that B. & B. are not entitled to notice of testimony to be taken. Their argument, however, will have weight with the examiner, and if you wish to file testimony you had better telegraph us to-morrow row. He may take up and decide the reissue case without any statement from you refuting B. & B.'s argument. We had a lengthy interview with Gregory, and had to force him to a decision.

We charge your account with $2.50.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq.,
New York City.

P. S.—If you wish to file testimony or argument we will not ask for an extension of the thirty days, but merely give notice that we will file some argument bearing on the case, and ask examiner not to give decision till we can file it.

W. & CO.

612 *O, P. B. S. Oct.—27th*, 1869.

WASHINGTON, D. C., *Oct. 26th*, 1867.

DEAR SIR: Your telegram came to hand. Gregory promised not to finally act on the case until the papers you sent are filed.

Very truly, yours,

WIEDERSHEIM & CO.

L. W. SERRELL, Esq.,
New York City.

We will keep you informed of the progress of the case.

N. Y., *Oct. 18th*, 1867.

[By telegraph from Washington]

To LEMUEL W. SERRELL,
121 *Nassau.*

Smith here all right. Objections ruled out. Keep quiet about it.

WEIDERSHEIM & CO.

11 col. 44.

P, P. B. S.—Oct. 29th, 1869.

WASHINGTON, D. C., *Oct. 18th*, 1867.

DEAR SIR: Your telegram of yesterday came to hand after the Patent Office was closed. M'r Smith was here to-day, and we had an interview with the Commissioner, according to whose decision the opposition is ruled out.

M'r Smith ordered a copy of the opposition, and asked for a
613 delay of ten days in the examination to be able to refute any statement in the opposition which might make an impression on his (the examiner's) mind.

We will report further to-morrow.

Very truly, yours,

WEIDERSHEIM & CO.

Q, P. B. S.—Oct. 27th, 1869.

JOHN E. WEIDERSHEIM.

OCT. 27TH, 1869.

GEORGE W. GREGORY, J'r, being about the age of 26 years, and having been first cautioned and sworn to tell the truth, the whole truth, and

nothing but the truth, in the matter in controversy aforesaid, did thereupon depose, testify, and say as follows:

1. Q. What is your residence and business?

A. My residence is Washington; and my business an examiner of patents.

2. Q. Do you recollect the reissued patent of W'm Smith, and three divisions of it?

A. I do.

3. Q. Do you recollect an argument endorsed on the back in pencil "Brown & Beadle," put in your office September or October, 1867?

A. Whilst these reissues were pending an argument was filed, but I do not remember the endorsement; and it was filed by Brown & Beadle, or by Dickerson.

4. Q. Do you recollect referring to said argument and to said endorsement in pencil, in your official letters and argument from the Patent Office?

A. Q. I could not say positively, but the written record of the case will show.

614 5. Q. Do you recollect what kind of a drawing was put in by Brown & Beadle with that argument?

A. I do not.

6. Q. Please look at the drawing in the certified copy of said argument and state if you ever saw it before.

A. I do not recall the drawing, but if such a drawing is attached to the said argument I must have seen it.

7. Q. Can you swear that the said drawing was with the argument when it was filed in your office?

A. I cannot.

8. Q. Please look at the upper part of the drawing showing the sectional end of the India-rubber cord, with the interlocking warp threads, and say if it was not drawn in red, in said argument put in by Brown & Beadle, and the only part that was put it.

A. As before stated I do not recall the drawing, never having had occasion to look at the case since I treated it finally, and for that reason cannot state.

9. Q. Did M'r Dickerson, prior to Brown and Beadle's argument being put in, argue the case before you in the Patent Office?

A. M'r Dickerson called upon and talked to me in reference to the case prior to that time.

10. Q. Did you ever notify the complainant of any argument had before you, or of any argument filed by Brown and Beadle?

A. I cannot tell without reference to the record and to official letters in the case to tell.

11. Q. Look at complainant's exhibit, marked K, P. B. S., Oct. 27th, 1869, and state if it was handed to you; and, if so, put on file.

A. I never, to my recollection, saw a printed pamphlet in the case when the application was before me.

12. Q. Do you recollect an affidavit, with exhibits, sworn to by E. T. Sawyer, and put on file by Brown & Beadle on 28th Oct., 1867?

A. While the application was pending, exhibits signed by M'r Sawyer were filed.

615 13. Q. Do you not recollect whether or not it was sworn to?

A. I think it was sworn to.

14. Q. Do you recollect the name of the notary before whom it was sworn to?

A. I do not.

15. Q. Please state, as far as you can recollect, what was contained in that affidavit?

A. There were, I think, three pieces of woven elastic goods, one woven with a stationary rubber warp, one with a moveable rubber warp, and the third with both classes in one piece.

16. Q. Was there not one piece where the rubber warp interlocked with the non-elastic warp, and threaded on weft thread before the other so that each two did not lie perpendicular over and under each other?

A. I cannot swear as to the particular crossings of the warp and weft, and stated in my former answer only what samples were intended to exhibit.

17. Q. Are you not aware that a great deal of argument on the reissue of my patent did not go on the files of the Patent Office before you?

A. I remember having a number of conversations with both M'r Smith and his attorney, M'r L. W. Serrell, and was spoken to by the opposing solicitors, Mess'rs Brown and Beadle. Such conversations are every-day occurrences in the treatment of cases, and it is always understood that final action appears on the written record.

18. Q. Do you not recollect exhibiting this piece to me and M'r Serrell; that is, the piece where the rubber was interlocked with the non-elastic warps, as before stated, and using the same as an argument that it was not made according to my patent?

A. I remember showing you the samples filed by Brown & Beadle, and do not remember that I used the argument as stated in the question.

19. Q. Do you not recollect in that sample the rubber was interlocked with the non elastic warp?

616 A. I cannot swear positively as to the construction and crossing of the threads in that fabric without examining it, as it is a long time since I have seen it.

20. Q. Was the different samples distinguishable one from another?

A. My impression at the time was that the fabrics were the same as to their crossings, and that it made no difference in the appearance of the fabric whether the Indian rubber warp was stationary or moveable, except the stationary warp made the fabric appear a little smoother.

21. Q. Did not you say to Wiedersheim that Brown and Beadle was not entitled to notification of the taking of testimony, as you did not consider them in opposition to my reissue?

A. I don't remember of saying any such thing.

22. Q. Will you swear that you did not say it?

A. I can only say that I have no recollection of it.

23. Q. Was you not wrote to by M'r Serrell to inquire officially if there was any opposition to my reissue?

(Objected to by defendants' counsel as leading, and as a cross-examination of his own witness.)

A. If such a letter was written it will be with the files in the case.

24. Q. Did you ever inform me officially or otherwise if I had any opposition to my reissue?

A. I can only refer to the record.

25. Q. Did you not refuse to say who the names were that opposed my reissue, after notifying me that I must notify the opposition?

A. No, sir.

26. Q. Did you not receive a letter from M'r Serrell requesting to know the names?

A. The record will show.

27. Q. Did you not retain a letter in your office ten days before answering that I must notify the opposition?

(Objected to.)

617 A. I always answer official letters as promptly as I can, in view with my official duties.

28. Q. Do you mean to say that your duties were so arduous that you could not answer a letter in less than ten days?

(Objected to.)

A. I don't remember the delay in answering any letter, and if there was delay it was answered as soon as I could answer it.

29. Q. Was you not informed by Brown and Beadle, or through some other way, that I was taking evidence in Philadelphia prior to your sending an official letter that I must notify the opposition?

(Objected to.)

A. It is so long a time since I treated the cases that I cannot recollect what may have been said to me, and can only rely on the written record of the case. Inventors are constantly before me with their applications, and when I treat their cases and banish them from my mind, and take up new ones, I cannot remember details.

30. Q. Did you not treat my case, when before you, contrary to the written rules of the office, and sometimes you would stick to the rule, and at other times not pay the least attention to it?

(Objected to.)

A. I always act under the rules of the office, and no doubt much of the delay occasioned in reference to your case was owing to a want of rules for carrying out the order of the Commissioner allowing opposition to reissues, and which order was afterwards rescinded.

31. Q. Was it ever the rule of the Patent Office not to notify the party and give the names of the opposition?

No, sir.

618 32. Q. Do you not know that at the time the office was compelling me to give thirty days' notice from the time of publication other parties had thirty days from the time of filing the petition?

A. I can only answer as to action in my cases. Your application was the first reissue before me under the Commissioner's order alluded to, and I had the thirty days fixed from some particular day, and that day was decided by my superior in office to be the date of publication, and I wrote a letter to that effect accordingly.

33. Q. Did not M'r Theaker, the Commissioner, before me and yourself. reprimand you for altering the time from the day the petition was filed?

(Objected to.)

A. He never reprimanded me before you or any one else, and he sanctioned the ruling in the case, which was his own ruling.

34. Q. Did not the Commisssioner subsequently alter that ruling?

(Objected to.)

A. If you mean the time in which opposition might be made, he did not.

35. Q. Are you not aware that the ruling was made orignally to anticipate my application for the reissue of my patent—I mean the thirty days' rule?

(Objected to.)

A. It was not made to anticipate any case.

36. Q. Did you not tell me that I should never have the reissue of my patent in division B covering the fabric?

A. The written record shows I refused the patent a number of times.

37. Q. Did you not state to me individually that I should not have my patent covering the fabric under division B?

(Objected to.)

619 A. I may have said to you, as I often do, that I could not possibly grant that claim.

38. Q. Did you not say I should never have the reissue of my patent, meaning thereby either by you or by any one else?

(Objected to.)

A. No, sir.

39. Q. Have you not stated to other parties that the opposition would law me during the time the patent run, and never nothing would grow out of it?

(Objected to.)

A. I never used such words.

40. Q. Did you ever use words of similar import?

A. I may have said that as the case was passed, as I understood, by the board of examiners-in-chief, in order that the patent might be brought before the court, and that it would be tested there.

41. Q. Is that answer as true as any other you have given in this case?

(Objected to.)

A. I consider all of them true.

Testimony here closed for this day. Complainant claimed the right to adjourn the hearing for a week, to which M'r Dean, counsel for defendants Nichols and Whitehouse, objected.

WASHINGTON CITY, D. C., *November 15th*, 1869.

The taking of testimony in the above-entitled cause having been
620 adjourned to this day, is now continued by agreement, M'r Smith, the complainant, being present on his own behalf, and M'r Dean for the defendants.

M'r Dean states that the time for taking testimony in the suit of Smith vs. The Glendale Elastic Fabrics Co. having since the adjournment been extended, he now appears in behalf of said company.

42. Q. Please state if you did not say to a certain gentleman, three or four months before the examiners-in-chief had granted my reissue on division B, that the opposition would oppose me through all the courts; if nay, please state what you did say.

(To this question objection is made unless the name of the certain gentleman is given.)

A. I don't remember using the words opposition in conversations relating to this patent, but I have undoubtedly said that the case would probably be tested in the courts, and it would be seen whether I was right or not in my action.

43. Q. Was this prior to the reissue on division B?

A. I presume it was after; I can't fix dates.

44. Q. Please state what conversation you had with P. B. Stilson about February or March, in 1868, and please state what that conversation was.

A. I cannot state positively about a conversation with M'r Stilson, but whilst the cause was pending before the board of examiners-in-chief, I think M'r Stilson asked me about it, and if he had best take hold of it, implying that he was to buy an interest therein. I think I told him I could not grant the patent, and did not see how the board could do it, in view of the reference cited by me.

621 45. Q. In the different English and French patents, while my case was before you, which I had to examine, did you read and study them before you referred them to me for examination?

A. I did.

46. Q. Why did you refer such ridiculous patents as some of them were, and which had no bearing on the matter at issue, to me?

A. I referred to them because from their description I considered that the fabric then claimed could be made on them.

47. Q. Did you not get those references from Brown & Beadle?

A. No, sir.

48. Q. Would it not have been proper and usual with custom for the opposition, if I had any, to have shown proof of the want of novelty in my patent, and not have put the trouble and expense upon me?

A. I think the rule for opposing reissues should have never been promulgated, but it was so promulgated, and this case being one of the first, rules had to be made as to what should be considered proper opposition.

49. Q. Was it not usual in any and in all opposition for the opposing parties to substantiate and be at the trouble and expense of their opposition? I mean any kind of opposition, whether it relates to my cases or not.

A. In all contested cases before the office, I presume each party pay their own expenses, and prove what facts they considered necessary, but as to reissues, there were, as I have said, no fixed rules as to what right opponents had or what they must show.

50. Q. I repeat the question, and desire more full and definite answer.

A. I cannot answer it more fully.

George W. Gregory cross-examined by M'r Dean, counsel for the defendants.

622 Cross 1. You say in your direct examination that you had a number of conversations with M'r Smith in the treatment of his cases; can you state whether you talked over with him the various matters contained in the letters or papers announcing your decision in his case?

(Objected to, because the record must show for itself.)

A. I do not remember conversations, but presume they were substantially as presented in official letters in the file.

Cross 2. Do you remember a conversation with M'r Smith regarding the model with the green and pinkish elastic fabric attached, and cutting the belt of said fabric on said truss, at the request of M'r Smith, and permitting him to take a piece of it? If yes, state what said Smith said regarding said fabric, and all of said conversation that you can remember.

(Objected to by M'r Smith as new matter. The defendants' counsel must make M'r Gregory his own witness, if he would go into such matters.)

A. I remember showing this truss to M'r Smith, and saying that there was his fabric. I think he said it looked like it, but it was not made in this country. I told him it made no difference where it was made if it was made before he made his fabric. He thought it might make a difference. I gave him a piece of the fabric at his request, that he might examine it when and as he saw fit.

Cross 3. Did you have any conversation with M'r Smith regarding the time when that fabric had been placed in the Patent Office; if yes, what?

(Objected to as new matter; the counsel is making M'r Gregory his own witness.)

A. I can't state positively; probably I did, and as to the age of the fabric, it was sufficient for me to know that it was received 1838. The record of the case will show my views in relation to the truss.

Cross 4. Please state what is on the tag attached to the truss.

623 (The complainant objects as before.)

A. The writing on the tag is "Enoch Thomas, New Athens, O., In. Surgeons' Trusses. Pat. Mar. 12, 1840."

Cross 5. And what is on one of the pads of said truss?

(Objected to as before.)

A. "Rec'd without name, Dec. 20th, 1838."

Cross 6. In that respect is the truss in the same condition as when you first saw it?

A. Yes.

Cross 7. Look at the other truss, marked Enoch Thomas, with the white elastic fabric annexed, and state whether the corresponding parts, with the exception of the wire springs, are not like the one deposited Dec. 20th, 1838.

(Objected to as before.)

A. Some of the pads in the two models resemble each other in form, but there is much more in the last truss handed me than in the one filed in 1838.

Cross 8. Take first the one filed in 1838, and then look at the parts of the one filed in 1839 that correspond, and see if you do not find in that parts corresponding with every part of the one filed in 1838, and are they not so far similar, except that in the 1839 model the pads have wire springs, which do not exist in the 1838 model?

(Objected to as before, with the further objection that the witness has fully entered into the matter, and placed his reasons and arguments on file.)

A. This 1839 model seems to show an entire truss; the one of 1838 only a portion; each has a pad with straps or webbing branching centrally therefrom, and having also two other flat and rounded straps, with a small pad on the rounded portion; there are two other pads common to both, similar in shape.

624 Cross 9. Do you not find in the 1839 model all that you find in the 1838 model, and as far as they have corresponding parts, are they not similar, except that two of the pads in the 1839 model have wire springs?

(Objected to on the same grounds as the last question.)

A. The parts shown in the 1838 model are found substantially in the model of 1839, but the model of 1839 has much in addition to that of 1838; the model of 1839 has wire springs on the pads; that of 1838 has none.

Cross 10. In what respect, if any, was the model of 1838 not a complete truss?

(Objected to as above.)

A. I am not posted as to trusses, but judge that the model of 1838 is not complete, as it could not be fastened on the body in its present state, the end of the strap to go around the body being without a buckle.

Examination redirect, de bene esse:

1. Q. In the conversation which you state in your cross-examination you had with me, was it not in the presence of L. W. Serrell, of New York, and was not your conversation addressed to him instead of me?

A. I think both yourself and M'r Serrell were in town the day I found the truss. I don't remember whether I showed it to both at the same time or to one of you separately. I think I talked to both of you about it.

2. Q. Did not M'r Serrell always, in your presence, when I was with him, have the chief conversation; was not your conversation directed principally to him?

A. M'r Serrell did most of the talking, but at times all took part.

3. Q. Did not M'r Serrell make a disclaimer before you to get a certain patent which you had brought forward in opposition to my claim?

625 A. I do not remember any disclaimer, and if any such disclaimer was made and filed, it will be found as an amendment in the application.

4. Q. You state you are not posted about trusses; look at the truss of 1838, and the truss of 1839, and say if the straps, the facing, the trimming, and the webbing are not different as far as they go.

A. Each truss has one pad of the same shape; the others differ somewhat in shape; the facing, the trimming, and the webbing are different.

5. Q. Please look at the truss of 1839, and the springs attached to the pad, and say whether it is not substantially different from anything in the bogus model of 1838.

A. I stated, in my cross-examination, that there were not springs in the model of 1838.

6. Q. Look at the model of 1839, and say whether the pad and springs are not substantially different from anything you find in the model of 1838.

A. The pad in the model of 1839, and to which the springs are attached, is of the same shape as the one of 1838, but the latter has no springs.

7. Q. Would you call the pad of 1838 and the pad of 1839, which has been referred to, substantially the same kind of pad?

A. The pads themselves are alike as to formation. I cannot answer as to similarity of purpose, as I am not familiar with trusses and have not read the specifications.

8. Q. Can you state for what purpose those springs are placed on the pads?

A. I cannot.

(Signed) G. W. GREGORY.

Subscribed and sworn to before me this 27th day of October, A. D. 1869.

PHILO B. STILSON, *Com'r.*

NOV. 15, 1869.

ALEXANDER A. C. KLAUKE, being about the age of thirty-one
626 years, and having been first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

1. Q. Please state your name, age, residence, and occupation.

A. My name is Alexander A. C. Klauke; I am thirty-one years of age; reside in Washington City; and am a solicitor of patents.

2. Q. Were you connected with any one in business in 1867 and the beginning of 1868? If so, state with whom.

A. I was connected with John A. Wiedersheim and William A. Wie-

dersheim, under the firm of Wiedersheim & Company, in Washington and Philadelphia.

3. Q. Was your firm acting under a power of attorney from L. W. Serrell of New York, in the reissue of William Smith's patents A, B, and C?

A. It was.

4. Q. Please look at complainant's Exhibits L, M, N, O, P, Q, P. B. S., October 27th, 1869, and say whether you recognize those exhibits as issued by your firm.

A. I recognize Exhibits L, M, N, O, and Q as communications from our firm to M'r Serrell in the above-mentioned reissue cases, they having been written and signed by myself. About Exhibit P, being under oath I cannot definitely decide from memory, it being merely a telegram delivered and bearing no signs by which I could recognize it.

5. Q. Did you keep copies of telegrams which you sent parties?

A. We did not, but we made a practice of writing to the parties telegraphed to, and reporting what we had telegraphed. The letter-book of Wiedersheim & Company, if still existing, will settle this question.

6. Q. Have you any reason to doubt, in your own mind, that you did not send such a telegram as Exhibit P, P. B. S.?

A. No, sir; I presume we sent that telegram.

627 7. Q. Did you not go to H. W. Beadle at the request of L. W. Serrell, of New York, and personally notify him that William Smith was going to take evidence in New York? If yea, please state the answer that he made.

A. Our firm being only associate attorneys with M'r Serrell, M'r Smith's case not being what we professionally call our own. I cannot remember whether I or my partners notified M'r Beadle of M'r Smith's intention to take testimony, but I do recollect having a conversation with M'r Beadle in regard as to whether the firm of Brown & Beadle made the opposition for themselves or for other people, the official opposition being merely signed "Brown & Beadle."

8. Q. Do you remember writing a letter to L. W. Serrell, of New York, in your own handwriting, stating that you had waited upon H. W. Beadle as requested, and his reply was that he had nothing to do with the matter, or words to the same import?

A. I do not.

ALEX. A. C. KLAUKE.

Subscribed and sworn to before me this 15th day of Nov., A. D. 1869.

PHILO B. STILSON,
Com'r.

The complainant here states that he will put in proof either the original letter or a certified copy to be appended to M'r Klauke's testimony.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Philo B. Stilson, a United States commissioner for the District of Columbia aforesaid, do hereby certify that the reason for taking the foregoing deposition is and the fact is the witness is material and necessary in the cause caption of the said deposition named, and

628 that Alexander A lauke is a competent and credible witness.

I further certify that both parties appeared before me at the taking of the said deposition and took part therein.

I further certify that during the taking of the said deposition I was attended by said plaintiff in person, and said defendants, by their attor-

ney and by the witness, who of sound mind and lawful age, and the witness was by me first cautioned and sworn to testify the truth, the *the* whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness, and from his statement, and after carefully reading the same to the witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of returning it to the court for which the same is taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and official seal this fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

[SEAL.] P. B. STILSON,
United States Commissioner for the District of Columbia.

A copy.

KENNETH G. WHITE, *Clerk.*

NOVEMBER 16TH, 1869.

M'r CHARLES MASON called on behalf of the complainant.

1. Q. What is your name, age, residence, and occupation?

629 A. My age, about sixty; my name, Charles Mason; my residence at present is Washington City; and my occupation is an attorney at law, but I devoted my more particular attention of late years to patent law.

2. Q. Was you ever connected in official capacity in the Patent Office? If yea, please state when and in what capacity.

A. I was Commissioner of Patents from May, 1853, till some time in August, 1857.

3. Q. Are you well acquainted with the usage and practice and rules of the Patent Office since you left it in 1857?

A. I am tolerably well acquainted with them.

4. Q. Do you recollect the reissue of a patent of William Smith in three parts, A B and C, in the latter part of 1867 and the beginning part of 1868?

A. I do, especially the last of the divisions that was granted.

5. Q. Do you recollect two models of trusses being marked Enoch Thomas being exhibited and argued upon before the board of examiners-in-chief? If yea, please look at the two models now exhibited to you, and say if they are the same.

A. I recollect the two models, and I think these are the same.

6. Q. Please look at the fragment of a model marked Enoch Thomas, 1838, on the pad, and state from the freshness and appearance of the velvet if it is not, in your opinion, of much later date than the one marked Enoch Thomas?

A. It looks to me as if it were of a later date; the velvet and the leather both look newer; there is no velvet on one, but the whole appearance of the one with the card attached, and marked 1838, seems to indicate a more recent date.

7. Q. On the model marked 1838, look at the silk which is stitched on the narrow webbing, and state if it has not a fresher and newer

630 appearance than the silk binding and silk stitching around the pad; and state, if in your opinion, if the stitching the narrow

web and the stitching in the binding around the pad was executed with the same silk at the same time?

A. The stitching on the narrow webbing seems much newer than that around the pad; I should not think it was executed with the same silk at the same time, as near as I can judge from appearances.

8. Q. Please look at the two models, and say if they are not substantially two different models?

A. I should think they were substantially two different models.

9. Q. Please look at the model having the green and pinkish fabric upon it, and state if there is any means or method provided whereby it can be fastened around the body?

A. I see no means unless it were fastened with pins, which might be done.

10. Q. In your experience as a patent commissioner, and of your knowledge of the Patent Office as a patent lawyer, have you not known and heard of instances whereby the record of the Patent Office could not be found, and when models have been missing, and other models tampered with?

(Objected to by defendant's counsel.)

A. I do not remember of any case where the records of the office could not be found unless you consider as records papers filed in the office; I have often known such papers to be missing; I have often known models to be missing also; I am not sure that I have ever positively known models to have been tampered with, at least I have no recollection of any such case now.

11. Q. In the examination on these models with the machinist's books before the board of examiners-in-chief, was not the book and the models exhibited, and after thorough exhausting arguments, had at different times for some months, was not the argument of the examiner
631 overruled, and the patent issued by the board of examiners-in-chief?

(Objected to.)

A. The book and the models were exhibited at that time, and after a full argument the decision of the examiner was overruled by the board of examiners-in-chief, as will appear of record.

Cross-examination:

Cross 1. Does not the appearance of age, in models, depend upon the care with which they are kept?

A. To a great extent that is undoubtedly the case.

Cross 2. Would not the stitching of the small pieces of fabric to the pad look newer or brighter than the stitching around the outside, if it lay in such a manner that the fabric would cover the stitching and keep it from the light, and is not the fabric itself less faded when it lies close to the pad than that portion of it further from it?

A. It would doubtless look newer and brighter if it were concealed from the light, but I should not think that would account for all the difference between the stitches at the two different points; there appears to be some difference, though that difference does not seem to be very marked.

Cross 3. Does not the fabric appear to be stitched through the leather back of the pad?

(Objected to as new matter.)

A. I should rather think it was.

Cross 4. Upon an examination of the two models, do you not find all the parts of the 1838 model in the other one, and are not these parts similar, substantially, and apparently intended to subserve the same

purpose, the difference appearing in two of the pads of one that they have wire springs attached to them?

A. All the parts of the 1838 model seem to have some equiva-
632 lents in the other model; there are parts in the other model which are not found in the model of 1838, and some of the parts which are found are very differently constructed, having spiral springs not in the other; there is one more pad than in the 1838 model, and there are two straps which look as though they were intended to go around the legs.

Cross 5. Did the controversy regarding this reissue take place since you ceased to be Commissioner of Patents, and how came you acquainted with the circumstances attending it?

(Objected to as immaterial.)

A. It took place since I ceased to be a Commissioner of Patents; I became acquainted with the circumstances attending it by having been employed by M'r Smith to obtain the patent on the last division of the reissued patent which was granted by the Patent Office.

Cross 6. While you were Commissioner of Patents did you not take pains by the establishment of stringent rules, and a proper discipline in those under you, to preserve intact the models, papers, and records of the office?

(Objected to by the complainant as leading and immaterial.)

A. I did, to the best of my ability.

Direct resumed:

12. Q. In your answer to question number two of your cross-examination, when counsel for defendants, while placing the narrow webbing or fabric in a certain position whereby the silk in the stitching would not be so exposed to the action of the air, please look at the silk stitching in the narrow webbing when it is so placed whereby the silk stitching is most exposed to the air, and say whether it has not a newer and a brighter appearance than the silk stitching around the borders of the pad.

(Objected to as a re-examination of points already testified to.)

633 A. It has a newer appearance than the silk stitching around the borders of the pad; I can't tell what its exposure was.

13. Q. In your answer to your question number two of your cross-examination, did not the counsel for the defendants place the narrow fabric on the pad in a certain position to cover the silk stitching in the fabric to show that the silk would not be exposed to the air in such a position, and therefore would be brighter and appear newer?

A. He placed the narrow webbing over the silk stitching, to show one of the possible ways in which it might have lain on the shelves of the Patent Office.

14. Q. I now ask you to look at the silk stitching which would be most exposed to the action of the air when so placed in such a possible position in the Patent Office, and say if the stitching does not appear newer and brighter in that position than around the borders of the pad.

(Objected to as before.)

A. The stitching looks brighter than it does around the pad, as I have often said before.

15. Q. Have you not known, since you retired from the Patent Office, Commissioners of Patents having to resign the official capacity for misdemeanors in office?

(Objected to.)

A. I cannot say that I have; some Commissioners have resigned, but I do not know the reasons.

Cross examination resumed:

Q. Can you tell what exposure to light or shade any particular stitching was subjected to?

A. I cannot.

CHA'S MASON.

Subscribed and sworn to before me this 16th day of Nov., 1869.

PHILO B. STILSON,
Com'r.

634 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Philo B. Stilson, a United States commissioner for the District of Columbia, aforesaid, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that Charles Mason is a lawful, competent, and credible witness.

I further certify that both parties appeared before me at the taking of the said deposition, and took part therein.

I further certify that during the taking of the said deposition I was attended by said plaintiff in person, and said defendants by their attorney, and by the witness, who is of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of returning it to the court for which the same is taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and official seal this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

[SEAL.] P. B. STILSON,
United States Commissioner for the District of Columbia.

A copy.

KENNETH G. WHITE, *Clerk.*

635 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
v.
THE GLENDALE ELASTIC FABRICS COMPANY.

UNITED STATES OF AMERICA,
District of Columbia, to wit:

I, Edmund F. Brown, a United States commissioner for the District of Columbia, do hereby certify that on the thirteenth day of January, A. D. eighteen hundred and seventy, I attended in the library-room of the United States Patent Office, in the city of Washington, in the District

aforesaid, in pursuance of a notice given by the complainant in the above-entitled cause, when the following procedings were had, viz:

636 ENOCH THOMAS, being duly sworn, doth depose and say, in answer to interrogatories by the complainant, as follows:

(Complainant here states that if the defendants do not appear to cross-examine witnesses to be examined this day it was stipulated between complainants and defendants that the defendants may cross-examine M'r Enoch Thomas in the city of Chicago, Illinois, within thirty days of the taking of this testimony here, at their own expense. Also, any employees of the Patent Office that may be examined this day the same terms are agreed to, it being understood that their cross-examination shall be here at the Patent Office, after due notice shall be given to the complainant.)

1. Q. Please state your name, age, residence, and occupation.

A. My name is Enoch Thomas; my age is sixty-six years; my residence, Batavia, Illinois; my occupation, a physician.

2. Q. Did you ever apply for and obtain a patent for a Thomas's Hernial and Uterine Elastic and Spring Supporter? If yea, please state the time and the date when you made such application.

A. I did; the first application was made at the close of November, 1838.

3. Q. Did you send, at the time of your application, a model to the Patent Office? If yea, look at the models now before you and say whether you recognise among them the said model then sent by you.

A. I sent a model at that time, and I recognize this as the model, marked Enoch Thomas.

(The said model is marked by me Z Z Z, E. F. B., com'r, 13 Jan., 1870.)

4. Q. After sending the model marked Z Z Z to the Patent Office, please state when you first saw that model again.

A. On yesterday, the 12th of January, 1870, in the Patent Office.

637 5. Q. Did you ever deposit any other model in the Patent Office for such a description of truss than the one already referred to?

A. No.

6. Q. Please look at the exhibit now shown you, marked Y Y Y, E. F. B., com'r, 13 Jan., 1870, and say when you first saw the said exhibit.

A. On yesterday, the 12th of January, 1870, at the Patent Office.

7. Q. Did you ever use any green and pinkish webbing upon any instrument or model, the same that is attached to the Exhibit Y Y Y, in your professional practice?

A. No.

8. Q. Please examine and compare the model marked Z Z Z and the model marked Y Y Y, and give your best opinion of the newness of Y Y Y, in comparison with Z Z Z, and the reason of your opinion.

A. The leather of Y Y Y is fresher, the creases fresh and gloss, as of recent date, while on Z Z Z the leather shows age and worn, the creases being dirty and want the gloss; the binding and stitching on Y Y Y is comparatively fresh and little worn, whereas on Z Z Z it bears marks of age and much worn; the stitching of the narrow strips of webbing on Y Y Y is done with a common needle and thread and very imperfect, and appears fresh, the thread being white and fresh.

9. Q. Please look at file marked 217, Enoch Thomas, town of New Athens, county of Harrison, State of Ohio, truss received 5th December, 1838, then please look at the machinist's book of the Patent Office, marked volume 1, on page 2, under list of models received without name,

truss (put in drawer next Chasis), December 20, and say if that could by any possibility be represented as referring to your model marked as received December 5th, 1838.

A. No.

10. Q. Please look at the said machinist's book, volume 1, under 1839, December 5th, and say if that entry does not refer to the time when you made your second application for the said truss.

638 A. Yes.

11. Q. Please state, if your first application for said truss was rejected, the reason why it was rejected, and how the application was renewed. Please give the whole history of it to the best of your knowledge and recollection.

A. The first application was rejected March 16th, 1839; the cause of the rejection was want of novelty in the items claimed (not for want of novelty in the instrument); the letter of the Commissioner notifying me of the rejection gave me the privilege of electing to appeal or withdraw my application, receiving back twenty dollars. My reply was, first, to know the expenses of an appeal; and, secondly, I conceived he had done me great injustice for rejecting the application for want of novelty in the items claimed. On the first of April, 1839, he replied that the specification was subject to my order for amendment in any manner that I might see proper to make therein. I then wrote him that he might retain the twenty dollars, and I would send him ten to make up the thirty dollars to renew the application, by Hon. Henry Swearingen, member of Congress. I did send the ten dollars by M'r Swearengen, and renewed the application the last of November, 1839. The first specification was returned to me at Athens for amendment; it was amended and returned to the Patent Office, where errors were pointed out, and returned to me to be corrected. The errors pointed out were want of petition, and some letters were marked in the specification that were not on the model. These errors were corrected, and I think returned to the office with two claims, and I will here say would have been rejected as the first claim was, namely, for the want of the claim embracing the novelty of the instrument, had not the Commissioner sent me the form and wording of a claim that embraced the novelty of the instrument, saying that that was the only claim on which letters patent could be issued. The patent was issued 12th March, 1840.

12. Q. Please state, if you know, why the name of Hon. M'r Alexander is on the file of the Patent Office.

639 A. I think a part of my correspondence with the office was through him.

13. Q. In your examination before an examiner in Chicago, Illinois, in September, 1869, was there any questions put to you either in direct or cross-examination, to recall to your mind the rejection of your claim in 1838 and '39?

A. No.

ENOCH THOMAS.

Sworn to and subscribed before me this 13th day of January, 1870.

EDM. F. BROWN,
U. S. Commissioner.

GEORGE W. GREGORY, being duly sworn, doth depose and say, in answer to interrogatories proposed by the complainant, as follows:

1. Q. At the time of your former examination, in the fall of 1869, at time M'r Jacobs was examined and M'r Dean appeared as counsel for

the defendants, please state what occurred in the office of P. B. Stilson, between M'r Dean and yourself, what amount of money he gave you, and for what purpose he gave it to you.

A. M'r Dean paid me, I think, one dollar and fifty cents exactly, as witness fee; I at first refused to take it, as I did M'r Smith's, but he insisted upon my taking it, and I did so, as he said other parties footed his bills and expected to pay the witnesses' fees.

2. Q. Did not I see him count out to you a roll of bills, and did you not ask him how much so and so should have?

A. He handed me publicly in that office my fee as a witness, and only that. There was no reference made to any other person.

3. Q. Did not you and M'r Dean turn your back from the table where the only light was, and where no one was sitting (here the witness left the room and said he would be back directly), and he did not hand you the money and count it over to you there?

640 A. M'r Dean paid me the money at a table immediately adjoining the table where all the other gentlemen sat, about three or four feet from where all the others sat. The conversation was in the usual tone and no concealment was attempted or thought of.

(The complainant remarks that he does not say that any concealment was attempted; that this examination has this object in view, to show how unreasonable it is, and how unofficer-like for examiners in the Patent Office to take any interest or become an errand boy for either the complainant or defendant.)

4. Q. Did not you the next day, after receiving that money from defendant's counsel, pay the messenger who carried the models down to the office of P. B. Stilson?

A. I did not, and don't know who took them.

G. W. GREGORY.

Subscribed and sworn to before me this 13th day of January, A. D. 1870.

EDM. F. BROWN,
U. S. Com'r.

WILLIAM SMITH, the complainant, being duly sworn, deposes and says as follows:

In the office of P. B. Stilson, esq., at the time mentioned in the examination of M'r Gregory, I saw M'r Dean, counsel for the defendants, count out considerable money and hand it to M'r Gregory. M'r Gregory received it and made inquiry as to what manner it must be disposed of, and how much so and so should have. I understood from the conversation that it was money to distribute to the witnesses brought forward by the defendant. I saw no attempt made at any concealment in the transaction.

WILLIAM SMITH.

Sworn and subscribed to before me this 13th day of January, 1870.

EDM. F. BROWN,
U. S. Commissioner.

641 Circuit court of the United States, district of Massachusetts.

WILLIAM SMITH
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

642 OCTOBER 15TH, 1869.

Complainant offers the following objections (de bene esse) against the respondents bringing new matter upon the record:

First. It is mere sham, to procrastinate and prolong the suit. All the additional testimony which they attempt to put on the record was known to the respondents when they put in their answer to the bill of complaint, and has no bearing on the matter at issue, as my patent is an improvement on Robert William Seiver's patent and all others.

Second. That patent and many others was brought forward and contested in the Patent Office, in my reissues of my patent in 1867 and 1868, and all publications to be found with any distant bearing upon corded fabrics for ninety years were brought forward against me, but all opposition against me more firmly established my claims in spite of all the frauds practiced upon me by some one in the Patent Office, as the evidence will show upon the record.

Third. They have referred to several patents in their answers, and about twenty-five different persons and firms that knew of my improvement before my claim, and they have not as yet taken one particle of testimony, although ten months have elapsed since suit was brought.

Fourth. That a motion is now pending in court to amend their answer in the very matter they have put upon record, and I protest against such practice to forestall the action of court.

Fifth. When such amended answer is put upon the record it must be put in full, and not a mere reference to title and page.

Sixth. When a foreign patent is referred to, the patent must speak for itself, not what may transpire at the time of such patent in any court or elsewhere.

643 Seventh. I protest against the manner of defendant's counsel interfering with my witnesses whilst giving their testimony; also, with his giving me notices that he was going to take testimony; also, for a motion in court to amend his answer; also, a notice that he was going to take testimony in Philadelphia, all upon the same day, when he was under a prior notice from me to take testimony in my suits, and when the time arrives for his testimony to be taken, according to his notices, he does not take any.

Eighth. I protest against any oral testimony being taken, as he has verbally said he should do so, but has not given the names of the parties whose testimony he is going to take. If such evidence is allowed to come in, they will prolong the suit to any extent.

Ninth. The defendants have boasted to myself and others that I could not get a hearing before the expiration of my patent; and all their motions in court, and all their notices to add new matter, and putting new matter on the record, has that object in view.

W'M SMITH.

I further put upon record the Boston Daily Advertiser of Wednesday morning, Oct. the 13th, 1869, No. 117, 110, Vol. 114, No. 89, on the 9th column, 2d page, the following advertisement:

"GLENDALE ELASTIC FABRICS CO.,
"Manufacturers of Elastic Goods, Web, Cords, Sandallings, and Loom Goods.
"STODDARD, LOVERING & CO., Selling Agents,
"4 Milk street, Boston; 84 Chambers street, New York.
"January 1st, 1866.
"i. s. 2 W & i. s. Tu. Th. t. f."

I refer to M'r Lovering's examination, page 20, question 15.

644 I refer also to the testimony of M'r Dean, the partner of Lovering, page 111, question and answer 3 and 4.

COMPLAINANT'S EXHIBIT.

NOV. 25, 1869.

Offered by complainant in the "all-silk web," of which N. Nichols testified in his last deposition, counsel for respondents not objecting.—N. A. P., Ex'r.

MARCH 9TH, 1870.

FREDERICK D. ALLEN, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by W'm Smith, complainant, as follows, viz:

1. Q. State your name, age, residence, and occupation.

A. Frederick D. Allen; age, 61 years; residence, Boston Mass.; occupation, at present, commission business; I have been in the dry goods business on my own account since 1831.

2. Q. Were you ever acquainted or connected in business with Horatio G. Knight and Samuel S. Williston; if yea, when and where were you first acquainted with them?

A. I was acquainted with them, but was never connected with them in business; I first knew them at some time between 1831 and 1840, when they first commenced their button business in East Hampton.

3. Q. If you can recollect, please state when you first knew them under the name of the Nashawannuck Manufacturing Co.

A. I could not state, from recollection, when it was.

4. Q. Can you state where the said Knight & Williston had their office in 1848, '49, and '50, or any part of those years in Boston?

A. I think their place of business was with Burnham & Scott
645 at that time; it was so for a number of years; the firm name of Burnham & Scott may have been slightly different at the time, I can't tell how that is.

5. Q. Had they, in any part of those years above mentioned, their office in your establishment?

A. In their early button business, they had the use of my warerooms, and we acted as their agents for some years; Afterwards, the business was transferred to Burnham & Scott, but Williston, Knight & Co. have been in the custom of being in my store occasionally, ever since that time.

6. Q. Please state when they first introduced suspenders of their own manufacture in the market?

A. I could not state; I don't remember when it was.

7. Q. Do you recollect either of the above parties, Williston or

Knight, saying to you that they had built an addition to their button factory, to manufacture gum suspenders; if yea, state the year that addition was built.

A. It is impossible for me to say whether they ever stated the fact to me; I know that they did so, but I cannot remember whether they told me or not; it is all perfectly indistinct in my memory, so far as their telling me is concerned; and, as to the date, my impression is that they began that business in an experimental way at first, and finally came up to making it a business.

8. Q. Is it not your impression that they began business as suspender manufacturers in 1850?

(Objected to as leading.)

A. If that is the date recorded in the New England Register, I can state that the complainant called my attention to this question, and that I think that was the time stated in that book, which I consulted in order to answer his question.

9. Q. Did you ever know a suspender in the market known as 48's? if yea, state when you first knew them, how long they continued in the market, and who were the manufacturers of that class of goods.

A. I don't remember such goods at all.

646 10. Q. Do you recollect a style of suspenders in the market, corrugated and crumpled in the webbing; if yea, when did you first know them; how long were they in the market, and who made them?

A. I remember there were such goods in the market; I can't tell when I first saw them; I hav'n't seen them for some years past in the market, and I don't know who made them.

11. Q. Did you ever see such corrugated goods that were made by the Nashawannuck Manufacturing Co., or by Williston & Knight?

A. They made some goods that were very elastic, but not such as I supposed you referred to, and which I have answered about, which were made of pieces of rubber put between cloth; the goods they made were made very early, and were woven.

12. Q. Were the same goods last mentioned of Williston & Knight, corrugated somewhat similar in appearance to the cemented goods, after being woven?

A. They were very elastic; and possibly, when they went back to their natural position, after being stretched, were not so smooth as the closely woven web.

13. Q. Did they not have a little puckery appearance between the strands of rubber in the suspender?

A. I really don't believe I can tell that; my impression is that they were very elastic, and not so smooth as the closely woven goods made now; but whether they would pucker, as you say, I cannot tell, it is so long since my attention has been called to the subject.

14. Q. Will you please state how many rubber strands there were in the suspender, and about how far apart in the fabric they appeared to be.

A. I could not do so.

15. Q. Do you know a person named Horace B. Ames? if yea, state all you know about him, and what connection he had with Williston & Knight.

A. I've no recollection of any such person.

647 And in answer to cross-interrogatories propounded by Benj. Dean, esq., de bene esse, deponent saith as follows, viz:

Cross 1. Have you any knowledge of the date of the origin of the

Nashawannuck Co., except that you found it in the New England Register?

A. None at all; I couldn't probably have told within five years, except from that record of the date.

Cross 2. Was not that record a statement of the time when the company was incorporated?

A. I presume it was; it is so stated in the volume referred to.

FRED. D. ALLEN.

Subscribed and sworn to, before me, this 9th day of March, 1870.

N. A. PARKS,
Examiner.

MARCH 9, 1870.

W'M SMITH recalled.

Direct examination by W'm Smith.

1. Q. Have you been before examined in these cases?

A. I have.

2. Q. Please examine exhibit "Wakeman No. 5, N. A. Parks, ex'r," now produced, and state when you procured it and what it is.

A. Last Thursday, in the office of George Gifford, esq., in New York, the defendants produced this sample of web as an exhibit. The testimony given upon it was that it was made by the Nashawannuck Company about 18 or 19 years ago. I now produce it for testimony to be taken in my behalf.

(Counsel for defendant declines to cross-examine.

W'M SMITH.

Subscribed and sworn to before me, this 9th day of March, 1870.

N. A. PARKS,
Examiner.

648 MARCH 9, 1870.

JAMES C. ELMS, recalled by complainant.

Direct examination by W'm Smith:

1. Q. Please look at exhibits "Wakeman No. 5, N. A. P., ex'r, and measure what width it is.

A. Five inch cotton elastic web.

2. Q. From your long knowledge of the business of importing and buying similar goods to said exhibit, how long should you judge that piece of webbing had been manufactured?

(Objected to as incompetent.)

A. I should say about three years—from two to three years.

3. Q. Examine it again and say if it is of domestic make or imported goods?

(Objected to as before.)

A. I couldn't tell. It has the smell of domestic. That's the only way I can tell it. The India rubber smells a little differently from the English.

4. Q. State, if you know, the earliest period when five inch goring, either woven or cemented, were used or in demand for congress boots.

(Objected to as before.)

A. 1857 to 1858 is the earliest I ever knew of them.

Cross-examination by Benj. Dean, esq.:

Cross 1. What interest have you now in the result of these cases?

(Objected to as irrelevant.)

649 A. I should object to answering until I have consulted my counsel.

(Complainant here advises witness not to answer the question.)

The contract has been already produced in the cases. I have no further contract nor agreement.

Cross 2. Are any other persons interested in the patents in controversy in these cases, other than your firm and M'r Smith, the complainant?

(Complainant objects to any such question, as the direct examination does not call for it, and as the witness has already answered the question in former depositions, and that the witness is here to answer questions called for by the direct examination, and if the counsel for respondents declines to cross-examine upon the direct, complainant advises the witness to sign his deposition and leave the room.)

A. Boyce & Sons only, so far as I know.

(Complainant repeats the advice given just before by him, and asks counsel for defendants if he has any questions to put to witness upon the direct examination.)

J. C. ELMS.

Subscribed and sworn to before me, this 9th March, 1870.

N. A. PARKS,
Examiner.

MARCH 9, 1870.

ISAAC B. BOYCE recalled.

Direct examination by W'm Smith:

1. Q. Look at Exhibit Wakeman No. 5, N. A. P., Ex'r, and measure and state its width.

650 A. 5 inches in width.

2. Q. From your long knowledge of the business of importing and buying similar goods to said exhibit, how long should you judge that piece of webbing had been manufactured?

(Objected to as incompetent.)

A. Not more than five years.

3. Q. Is it of domestic make or imported?

(Objected to as before.)

A. I don't know.

4. Q. State, if you know, the earliest period when 5-inch goring, either woven or cemented, were used or in demand for Congress boots?

(Objected to as before.)

A. I think in the years '57 or '58.

And in answer to cross-interrogatories propounded to him by Benj. Dean, esq., deponent saith:

Cross. 1. How do you tell the age of shoe webbing?

A. I judge by the feeling, and there are but few webs that will last over five years' time; I may say no webs that will last over that time, as ordinarily kept, I think.

Cross 2. What affects them?

A. Changes of temperature, and other chemical changes that I am unacquainted with.

Cross 3. Does exposure to light and air affect their keeping?

A. I suppose it does, but I am unable to state how.

Cross 4. How does said exhibit compare in quality with those recently made?

A. It is inferior to some and better than some.

Cross 5. What interest, if any, have you in the complainant's patents? (Objected to as irrelevant.)

651 A. Only that interest which has been presented in a document offered on a former examination.

Cross 6. Are any other persons than the complainant and those named in your former examination interested in the patents in controversy? (Objected to as irrelevant, not called for by the direct examination, and as the information asked for has been given at different times, so far as known by the witnesses, and if counsel for defendants still continues to pursue such an unjustifiable cross-examination, complainant advises witness to sign his deposition and leave the room.)

A. I object to answering that question unless by advice of my counsel.

ISAAC B. BOYCE.

Complainant here asks M'r Dean, counsel for respondents, what were his motives and what did he want to prove by putting on the defendants' record an ex-parte exhibit, Wakeman No. 5.

Complainant also asks M'r Dean, counsel for respondents, what did he want to prove by putting upon the respondents' record, February 21st, 1870, a piece of elastic fabric marked Respondents' Exhibit ⟨C⟩, ex parte.

Counsel replies that when M'r Wakeman gave his testimony, he having been requested to produce samples of webbing made by M'r Smith, the complainant, while connected in business with Dodd and Wakeman, he produced, when giving his testimony, certain pieces of webbing which had been found in an old desk; that counsel thereupon put a sample of each in evidence, and while giving his testimony, counsel for the first time examined the exhibits and interrogated M'r Wakeman concerning them. It turned out that one exhibit, which counsel

652 thinks is like No. 5, here produced, was made by the Nashawannuck Company some time after the purchase by them of the looms of Dodd and Wakeman.

As to exhibit of respondents marked ⟨C⟩, N. A. P., Ex'r, it is put in as a sample of web made with alternate warp threads of rubber and cotton, as illustrating a piece of web made in accordance with a description given by some witness in the case of Cornish vs. Keene, which has been put in evidence, and for the purpose of showing that the elasticity of the web and the manner in which the rubber cords are covered does not depend at all upon the number of warp threads.

Complainant asks counsel for respondents to state more particularly when and where the exhibit was made, and where Cornish and Keene are to be found, and in what case and at what time the case referred to was argued.

Answer by respondents' counsel.

For all further information complainant is referred to the record made by the examiner now taking the testimony.

Adjourned to 3 o'clock p. m.

Resumed.

Complainant asks counsel for respondents where the webbing marked ⟨C⟩ was made, and if he puts it in to represent webbing made under his patent under division B.

For all further information the complainant is referred to his own counsel, to whom respondents' counsel will be glad to give all proper information.

653 Complainant replies that he is attorney of record in the cases in Boston, and is a scientific and practical expert, and if he were to ask his counsel in the case they would ask complainant for information and knowledge respecting it, and that he has a justifiable motive in asking for information as to the reason why that Exhibit ⟨C⟩ is put upon record, and again repeats the question to counsel for respondents.

MARCH 9, 1870.

CHARLES WINSLOW recalled.

Direct examination by W'm Smith:

1. Q. Look at exhibit Wakeman No. 5, N. A. P., Ex'r, measure it and state its width.

A. Five inches.

2. Q. State how many years you think said exhibit has been made.

A. I never saw any as wide as this till, I think, about 1855 or 1856. I think it has been made since that time. Five-inch goring was not generally, if at all, in use at that time.

3. Q. In 1848, '49, and '50, what was the width of the gorings cut for Congress boots?

A. The general use was four inch.

4. Q. How wide were the widest gores that were cut at that time?

A. They were generally four inches—sometimes four and a half.

5. Q. Do you know the Nashawannuck M'f'g Co.; and, if yea, how long have you known them?

A. I've known the agent, M'r Sawyer, since, I think, as far back as 1850.

6. Q. Do you know of their making any woven elastic webbing for Congress boots; if so, when did you first know them to do so?

654 A. The last of '54 I saw the first goods of their make—the first gorings of their make that I ever saw.

7. Q. Did you see the first woven elastic goring for boots that that company made?

A. I saw what was reported to be the first, and it was very imperfect. Had they made it before I should not have let them sell it here, as I had the exclusive right here.

8. Q. Look at exhibit Wakeman No. 5, N. A. P., Ex'r, and see if it has anything of the appearance of the goods made by the Nashawannuck Co. at that time?

A. I don't recollect how they were made at that time; they were very imperfect and sold as imperfect goods.

9. Q. Of what width were the woven elastic goods made by the Nashawannuck Co. at time?

A. My impression is they were 4 inch, as this was generally in use. I don't think it was any more than four inches.

10. Q. What is the widest elastic goring you have ever known used by the trade up to the present time?

A. I've not been in the trade lately and don't know as I can tell. I think the widest was about six inch.

11. Q. How long have you been out of the trade?

A. I have never been fairly out of the trade in goring, because I am still making goring, but not woven goring. I have not dealt in woven goring for the past two years.

12. Q. How many years is it since anything wider than 5 inches for woven goring was required in the market?

A. A very few.

13. Q. Has it been more than three years?

A. I should think it had been a little more than three years.

14. Q. Has it been more than five years?

A. I should think not.

15. Q. In a general way, how long will a piece of woven goring, made of vulcanized rubber, continue good before it decays?

A. That is very uncertain; sometimes in a very few months, but generally in a very few years at most.

655, 656 Cross-examination by Benj. Dean, esq.:

Cross 1. How long have you ever known it to retain its elasticity?

A. I've known it to give out sometimes in a few months, and sometimes to keep good for 7 or 8 years; but it is not safe for over a year. I should want to examine it very snug after a year.

Cross 2. When it gives out in a few months is it not because it has been improperly or imperfectly vulcanized?

A. Sometimes that is the case; but it is impossible to tell what is the cause. No one can tell whether it will last a long or short time from inspecting it.

Cross 3. Does not its life depend much upon how it is kept, and its exposure to light, air, and changes of temperature?

A. It depends some upon that, but I have known it to give out where it was boxed up tight, and to decay. I have frequently had it so.

Direct resumed:

16. Q. Look at Exhibit Wakeman No. 5, N. A. P., Ex'r, and say if that piece could be preserved eighteen years, under the most favorable circumstances, and have the strength and appearance of this exhibit at the present time.

(Objected to as leading and otherwise incompetent, and not open upon cross-examination.)

A. I have never seen any rubber that was eighteen years old, to my knowledge, that was good.

CHARLES WINSLOW.

Subscribed and sworn to before me this 9th day of March, 1870.

N. A. PARKS,
Examiner.

657 Circuit court of the United States, southern district of New York.

WILLIAM SMITH
vs.
J. T. WHITEHOUSE ET AL.

THE SAME
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

THE SAME
vs.
NATHAN NICHOLS. } In the district of Massachusetts.

Testimony taken on behalf of the complain't under the 67th rule of the Supreme Court of United States as amended. For final hearing.

WEDNESDAY, *March* 23*d*, 1870.

Present, W'm Smith, complainant, in person; Benjamin Dean, esq., counsel for defendants.

The complainant says that he is here, at the request of his counsel, to take testimony, the counsel being fully engaged out of the city,
658 and so on. Complainant requests to be duly sworn on his own behalf, that whatever he might say during the examination of witnesses might be considered under oath.

The respondents object to the complainant making any declarations or statements of fact during the examination of any witnesses except himself, and objects to his being sworn with reference to his making any statements during the examination by him of witnesses.

Complainant replies to the counsel that he has no intention of putting in evidence of his own during the examination of any witnesses, but claims the privilege of putting in his evidence at what period he may think it most prudent to do so.

WILLIAM SMITH, sworn as a witness on the part of the complainant, deposes and says:

The testimony of this witness deferred.

MAHLON MULFORD, recalled as a witness on the part of the complainant, deposes and says:

1. Q. When did you first enter into business as a shoe-finding house in the city of New York?

A. In 1850.

2. Q. In what part of the city?

A. At 302 or 303 Pearl street.

3. Q. Please state when you first sold goods for elastic gores for Congress boots.

A. I don't know exactly; about 15 years.

4. Q. Which was the first time that you dealt in this description of goods? And state if you can whether they were woven elastic goods or Horace H. Day's cemented elastic goods.

A. That is a question I can't answer; we used both kinds at the same time, or about the same time.

659 5. Q. What length of time was it after you went to do business at 302 or 303 Pearl street, was it that you began to deal in this description of goods?

A. About five years.

6. Q. Who was your partner in business at that time?

A. Clark W. Cary.

7. Q. Was he your partner from the year 1850, when you first went into business in Pearl street?

A. He was.

8. Q. Do you recollect complainant calling upon you and selling you woven elastic webbing for Congress boots?

A. I do.

9. Q. Please state the width of such webbing sold to you at that time?

A. 4, 4½ and 5 inch.

10. Q. I meant by the last question the width of the webbing I sold you?

A. That was the ordinary width from 4 to 5 inch.

11. Q. In your last answer you mean to say what it was 15 years ago?

A. Yes.

12. Q. Have you any knowledge or remembrance of the width of the goods prior to that time?

A. As far as I can remember we did not deal in the article, and therefore I do not know anything about it.

13. Q. Please state when you left Pearl street and came to do business in Spruce street?

A. Ten years ago, the 1st of May.

14. Q. Have you any knowledge or remembrance of me buying a small machine of you for splitting leather for $15, said machine being forwarded to Newark from your place to be altered to split India-rubber?

A. I remember M'r Smith purchasing such machine. I don't remember the price.

15. Q. Wasn't the payment of that machine paid and accounted for by woven elastic webbing, which I had sold to you?

A. Very probably; but I don't remember.

660 16. Q. Can you recollect the year that you sold that machine to me?

A. I cannot.

17. Q. Will not your books show when you sold that machine to me?

A. If M'r Smith did not pay us cash for it they will.

18. Q. Was not that transaction in the year 1852?

A. I don't know at all.

19. Q. Have you books running from 1851 to 1860, until the time you removed from Pearl street?

A. I don't know. I looked for a book with reference to a question asked me before, but could not find it.

20. Q. Have you the regular books of account from 1850 to 1860 whilst in Pearl street?

A. I think we have.

21. Q. Will you permit complainant or some one by him appointed to look over them, concerning woven elastic webbing and the machine just mentioned, and if anything is found in them concerning them, to make extracts from the said books?

A. I have no objection.

22. Q. Can you give an opinion how long vulcanized India-rubber in woven elastic goring will continue good?

A. I don't know. In a cool place it would keep better than in a warm one. It would keep from a year to a year and a half.

23. Q. Did you ever know any vulcanized India-rubber in elastic goring keep good for five years?

A. No, sir.

MAHLON MULFORD.

Subscribed and sworn to before me this 23d day of March, 1870.

R. E. STILWELL,
Examiner, &c.

PATRICK DALY, being duly sworn as a witness for the complainant says as follows:

661 1. Q. Please state what is your name, age, residence, and occupation?

A. My name is Patrick Daly. My residence No. 50, West Washington place. My age is about 60. My occupation is boot and shoe making.

2. Q. Please state your present occupation and how long you have occupied the premises?

A. My occupation is in boots and shoes, and my place of business in No. 82, Fulton street, and to the best of my knowledge it borders on 30 years since I went there.

3. Q. Did you make Congress boots in the years 1848, 1849, and 1850?

A. I think I did.

4. Q. Please state how wide the gores were cut in Congress boots in the years last mentioned?

A. To the best of my knowledge it was from 4 to 4½ inches. I correct this by saying I think, on second consideration, that the webbing was wide and I cut the gores to suit myself for different widths.

5. Q. Please state, if you can, the different widths you cut for gores for Congress boots in the years 1849, 1848, and 1850?

A. I can't state the precise width as I cut it at all times in proportion to the size of the shoe I was to make; the depth would be 4½ inches or less, according to the size of the shoe.

6. Q. In those years, last mentioned, were Congress boots worn high or low?

A. About the same height that are worn at the present time.

7. Q. Do you mean to say that Congress boots were worn as high in those days as they are now?

A. I don't think there is a great deal of difference. I have no doubt that at the present time they are a shade higher as a general thing.

8. Q. Is your business confined in Congress boots to gentlemen wear?

A. Gentlemen wear is the only kind of work I profess to attend to.

662 9. Q. Will you please state how many years vulcanized India-rubber will continue good in woven goring?

A. I have seen some of it last a long time in wearing, and some a short time, and how long without wearing it would last, I can't tell.

10. Q. Did you ever buy woven elastic goring in piece before it was cut up into gores?

A. I have bought it all times in whatever shape it came into the market.

11. Q. Did you ever know any vulcanized elastic goring remain good for five years?

A. I don't know that I ever saw it. I have seen it last for a long time after the boot or shoe was worn out and retain its elasticity.

Cross-examination by M'r Dean:

Cross 12. Have you not known it to retain its elasticity in old shoes long after they had been out of use; and have you not also known some to give out and become useless in very short time?

A. I recollect seeing it retain its elasticity for a long time, but exact time I can't state. Day's lasted the longest—some that is used of latter days did not last so long.

Cross 13. About when did you first use rubber elastic gores for shoes?

A. I can't say positively the date, but it was immediately after its first introduction. I was one of the first to use it.

Cross 14. Was it as soon as Day's shirred goods first came into market?

A. It was either directly at the time that it first came in or immediately after.

Cross 15. Did you not about that time see woven elastic gores in shoes that had been made abroad?

(Objected to as new matter, and not in direct examination.)

A. I don't recollect seeing any such shirred; was always under the impression that it was first invented by Day.

663 Cross 16. Can you tell about the time when you first saw elastic goods for gores in woven strips?

(Same objection as last.)

A. I have been looking at the license I got from M'r Day, as at that time we had to pay a pair for every pair of shoes we made, besides the cost of the material, but have lost all traces of the license and can't fix the time.

Cross 17. Did you pay the license-fee on all kinds of goring that you used at that time?

(Objected to, as witness has stated that he used but one kind of goring, and that is Horace H. Day's cemented goring.

Counsel for the respondents objects to the complainant making statements during the examination of witness.

Complainant replies that he has legal right to remind the counsel of the matter of the direct examination.)

A. I paid license of some of it.

Cross 18. On what kinds did you pay a license at that time?

(Objected to.)

A. Sometime' on black and sometime' on drab.

Cross 19. Did you pay a license on woven goring?

(Qbjected to, as witness has testified that he did not use them at that period, and the evidence has been between 1848 and 1850.)

A. I don't exactly know what you have reference to by woven gorings.

Cross 20. I mean those goods in which the rubber cords were woven in with threads of other stuff as distinguished from the goods when the rubber cords were held between two pieces of cloth cemented together?

664 (Same objection.)

A. I understood that all were kind of woven, but I paid a license on that that came in broad cloth.

Cross 21. Did you not use that kind of cloth some years before 1848?

(Same objection.)

A. To the best of my opinion, I did; I can't exactly place the time.

Cross 22. Did you not before 1848 also use that that came in strips of about the depth of gores?

(Same objection.)

A. I disremember; can't exactly say whether I did or did not before that time.

Cross 23. Did you not at about that time?

(Same objection.)

A. I can't tell about what time I commenced to use that webbing about the depth of goring.

Redirect, de bene esse:

24. Q. When you used that narrow cloth about the depth of goring for Congress boots, was not the salvage turned over top and bottom cemented fast and white on the back?

(Objected to as leading.)

A. I think it was as you say; I know it was white on the back at all events, and there was something on the edge that prevented it from ripping.

Cross-examination resumed:

Cross 25. Do you know what that something was?

665 A. I think it was part of the same material that the goring was.

Cross 26. When it was cut for gores could you unravel it?

(Objected to as leading.)

A. I never saw any that would unravel out in cutting.

Cross 27. Can you tell when you first saw such goods as were last enquired about?

A. I can't tell that.

Cross 28. Were those narrow goods made like the goods that are now used for shoe goods?

(Objected to as leading and new matter not in direct examination, and the witness has already testified what the goods were in appearance and make.)

A. The only difference that I know of is that they are now made finer and smoother.

Cross 29. With the exception that the present goods are finer and smoother, were the edges or selvages the same?

A. I don't cut much goring nowadays, and pay little attention to the edges or selvages.

Cross 30. Do you recall, or can you point out, any difference between the edges or selvages of the first narrow shoe-web you used and the shoe web now in use?

A. I don't know anything about it; all that I look at is to get an article that is useful.

Redirect resumed:

31. Q. In 1848, 1849, and 1850, did you purchase all your goring that you used from Horace H. Day?

A. I can't say.

PATRICK DALY.

Subscribed and sworn to before me this 23d March, 1870.

JOHN A. SHIELDS,
Examiner.

666 LORIN BROOKS, being duly sworn as a witness on behalf of complainant, says as follows:

1. Q. Please state your name, age, residence, and occupation.

A. My name is Lorin Brooks; age, 67 years; residence, 206 Wayne street, Jersey City; and occupation, boot-maker.

2. Q. Where did you reside in the years 1848, 1849, and 1850?

A. 85 Newark avenue, Jersey City.

3. Q. Please state what year you came to reside in Fulton street, New York.

A. In June, 1840.

4. Q. Please state when you left Fulton street, New York, and how long you occupied the premises.

A. I occupied those premises 8 years; I left in 1848.

5. Q. When did you return to Fulton street, in New York, after you left in 1849?

A. In 1850, in May or June.

6. Q. Did you keep your manufactories in Jersey City in 1848, 1849, and to May, 1850?

A. My manufactory has always been in New York.

7. Q. Was your nephew Edwin A. Brooks with you in 1848, 1849, and 1850?

A. He was with me neither one of those years. He commenced business himself in the year 1848.

8. Q. When did you commence making Congress boots?

A. I don't know definitely; I commenced about the year 1844, I think; it might have been year or two later or earlier; I can't say. The fact is

I made them 3 years before any one else made them, except the patentee, Dupont and Hyatt, and they made theirs by hand. I wish to correct myself; a lady's shoemaker named Dockarty, in John street, made some before I made any, and there was where I got my idea. I didn't know it was patented when I first used it; rather it was rumored so, but I didn't believe it was patented, as I thought if it was somebody would inform me.

9. Q. How deep did you make your gores at that time?

A. Not less than 4 inches or over 4½.

667 10. Q. How long did you continue to cut them that deep, 4 and 4½?

A. I don't know.

10. *a* Q. What goring did you use next after using Dupont & Hyatt's elastic goring for Congress boots?

A. I don't recollect, but I suppose it was imported webbing.

11. Q. When did you commence using Day's cemented webbing?

A. That was the first we did use.

12. Q. Did you make the boots yourself or have them made by other parties?

A. Custom work we made ourselves, and the sale work we ordered by the dozen.

13. Q. Who made the sale work?

A. Lorenzo Boyden, and I think more than likely Bannister also; he made some, but I don't recollect in particular—the old man Bannister I mean.

14. Q. Did you ever make a boot with the elasticity round back of the heel?

A. I think I did; I know it came all round in front.

15. Q. Was not that the first boot you ever made with elastic goring in it?

A. It might have been, but I don't recollect.

16. Q. What year was that in that you made that boot?

A. I don't recollect; I don't know when I had the first pair made; probably about the year 1843.

17. Q. Did not a young man named Dodd, with a black mustache, call upon you about twelve months ago, to give evidence for the defendants?

A. I have no recollection of the name or the circumstance.

18. Q. Have you ever been called upon before being subpenæd by me to give evidence in this case?

A. No, sir; not that I recollect; I have a faint idea that I went to a lawyer's office in Nassau street once, about something, but what it was I don't recollect; his office was in Nassau street, below Cedar.

668 19. Q. Did not you say to M'r Lorenzo Boyden, of Newark, that such parties had called upon you to know what knowledge you had of woven elastic goring coming into market, and you replied to him that you couldn't say when it was, but the first knowledge that you had of Congress boots that you made a pair of, the elastic went all around the heel?

A. I don't think any of that conversation transpired at all, not in those years at any rate.

20. Q. Do you know a M'r Bethuel Dodd and John P. Wakeman?

A. I don't know any such gentlemen by name; the names are not familiar to me.

21. Q. Do you recollect the complainant calling on you in Fulton street, in 1852 and 1853, at your store trying to induce you to buy woven

elastic web of him, which you refused to do, stating that Day's cemented webbing was the best, and you durst not do so for fear of a suit with M'r Day for infringing his patent?

A. I don't recollect what he called for, but I do recollect he called; I had a right from M'r Day to use his patent for two cents a pair; I made some shoes for him which I considered an offset; I wasn't afraid of a suit with Day; I can't fix any dates.

22. Q. Did Day ever allow you or give you any authority to use any one else's patent besides his own?

A. No, except this patent he bought of Dupont and Hyatt.

23. Q. The gores you used in making Congress boots was according to Dupont and Hyatt's patent or according to Horace H. Day's patent?

A. I don't understand what Day's patent was; I understood what Dupont & Hyatt's patent was and I put them in according to his patent. Manufacturing the material is another thing.

24. Q. Who supplied you with the elastic material to use in Congress boots?

A. Day.

669 25. Q. What was the width of elastic goring supplied to you by M'r Day?

A. About a yard wide until it was cut up.

26. Q. Was it made of silk or cotton, or both silk and cotton?

A. I have bought mostly cotton, but I recollect buying silk.

27. Q. For how many years have you known elastic goring to continue good without decaying and going bad?

A. I think about 2 or 3 years; it depends upon circumstances.

28. Q. How long have you known it to continue good under any circumstances and all circumstances?

A. I couldn't say.

29. Q. Have you known it to keep good for 5 years?

A. I think I have known it to keep tolerably good for five years.

30. Q. Do you allude in your last answer to goods made under the Horace Day patent?

A. Not in particular.

31. Q. State where and when you saw such goods merchantable after 5 years of age.

A. That is only a rough guess anyhow; I have seen it in my own shop.

32. Q. Do you understand weaving?

A. No.

33. Q. Do you know the difference between a stocking net and a woven article?

A. I haven't any experience in relation to the application of them; I judge that one is knit and the other woven.

34. Q. Have you got any knowledge of the relation of warp threads, weft threads, and cord threads in the articles of woven goods?

A. I know what warp is; I don't know what the other term is.

35. Q. Had you ever any experience in buying and selling woven goods?

670 A. I don't think I have, except what I have bought for my own use.

36. Q. Did you ever import any Congress boots from England or France or any other place abroad?

A. No.

37. Q. Did you ever import from abroad any elastic webbing?

A. No.

(Adjourned for half an hour for dinner.)

38. Q. Did you not inform me in Fulton street, in the years 1852 and 1853, that you had never used any other kind of elastic gores for Congress boots but Horace H. Day's?

A. I don't know that I did, neither do I know that I had used any other kind or not at that time.

39. Q. Can you swear that you had used any other kind at the time you made that remark to me in the years last mentioned?

(Question withdrawn.)

40. Q. Please state who went with you to lunch a little while ago.

A. M'r Dean and the young gentleman who is writing.

41. Q. What conversation had you, if any, with M'r Dean about the subject-matter of your examination? Please state all that occurred.

A. Nothing was said in relation to this examination except that I asked a question and M'r Dean said we had better say nothing about that—there was nothing revealed about this examination.

Cross examined by M'r Dean:

Cross 42. Did you ever see M'r Dean, counsel for the defendant, until you saw him in this room to day?

(Objected to as immaterial.)

671 A. I don't recollect that I did.

Cross 43. After the adjournment for lunch, did you not, as M'r Dean passed you at the street door, say to him that you didn't know where best to get your lunch; did he then not say that he and the young gentleman writing were going to Delmonico's, and did you not thereupon walk along with them without more being said at that time?

A. That is just about as correct a statement as you could make.

Cross 44. Did you not afterwards enquire whether this examination was with reference to a lawsuit or to an extension of a patent, and did not M'r Dean say to you that he would tell you nothing about it and that M'r Smith would be sure to enquire whether he had or not said anything about it?

A. Yes; that's correct.

Cross 45. Have you any recollection of M'r Smith, the complainant, calling upon you at Fulton street?

A. I recollect his calling when I was in Fulton street at my store.

Cross 46. Have you any means of fixing the date when he called?

A. No.

Cross 47. Can you say, or have you any means of fixing the time whether he called before you left Fulton street in 1848, or not, until your return in 1850?

A. I think both before and afterwards he called at my store, but more particularly I recollect his calling since.

Cross 48. Did he not call at your place on Fulton street immediately after your return to that store?

(Objected to, as the direct examination states when he did call.)

A. I have no recollection of any particular time; I recollect his calling second time; couldn't say when.

Cross 49. Do you know the difference between Day's cemented or shirred goods and the woven shoe-webbing used for elastic gores in Congress boots?

672 A. Yes; I know the difference.

Cross 50. Which did you first see, and which did you first use?

(Objected to, as witness has testified that he only saw one kind in use.)

A. I used Day's first, of course; I saw it first.

Cross 51. How soon afterwards was your attention called to the woven goods?

(Objected to as leading, and not called for in the direct examination.)

A. I should think a year or two.

Cross 52. When your attention was first called to woven shoe gores or woven webbing for shoe gores, was it in the shape of gores already in shoes or in pieces of webbing not cut into gores?

A. It was in shoes made up.

Cross 53. Where did you see that?

A. At my own store.

Cross 54. Were they brought there by persons weaving them, or had you purchased the shoes for your trade?

A. They belonged to some customer; I think it was my nephew or foreman that showed them to me.

Cross 55. From that time did the use of such goods and the frequency with which they were seen increase?

A. Not very rapidly; very slowly indeed.

Cross 56. Were not shoe-gores of that kind soon afterwards put into shoes by yourself?

A. I think not very soon.

Cross 57. Did you learn where the shoes having such gores in them that were first shown to you came from?

A. It strikes me that the first remark that was made was where they came from.

Cross 58. Where did said shoes come from?

A. I learnt from what was said at the time where they came from; they came from England.

(Objected to as incompetent.)

673 Cross 59. Could you tell from the make of the goods where they came from?

A. I don't think I could misjudge that; it is possible I should not know it in every case.

Cross 60. How long have you been in the business of shoe making?

(Objected to, as witness has already stated.)

A. Forty years last June, besides working at it 11 or 12 years before.

Cross 61. Has not your business always been of the better class of retail and custom trade of New York City?

(Objected to as immaterial.)

A. It grew into that directly after I commenced business.

Cross 62. Did not your business cause you to become intimately acquainted with English and French shoes?

A. Perhaps not more so than some others.

Cross 63. Did you not, to the best of your recollection, use woven webbing for shoe-gores in 1847, 1848, and 1849?

(Objected to, as witness has already testified that he used Day's patent.)

A. I think I did, but have no particular recollection about it.

Cross 64. Do you remember ever purchasing any woven webbing from M'r Smith, the complainant?

A. I don't recollect, but if he offered me any most likely I bought it; he knows.

Cross 65. Did you ever, from any conversation with M'r Smith, the complainant, learn or understand that he claimed to hav[illegible] woven webbing for shoe gores?

(Objected to as immaterial.)

A. I think I did learn it, but have forgotten it; I kn[illegible]

674 something he used to tell me about, but have forgotten what it was, whether for webbing, goring, strapping, I don't recollect.

Cross 66. Have you your books used in your business from 1844 to 1850?

A. I don't know; we burnt up some; we have got some, I don't know how old; possibly might find an order book.

Cross 67. From your order book could you tell the material used for shoe gores?

A. I could tell whether they were Congress gaiters or not, that is all.

Cross 68. Where was your place of business in 1848, 1849, and 1850?

A. I moved to No. 240 Broadway in May, 1848; from there to 188 Fulton street, in the year 1850, to the best of my recollection.

Cross 69. Did not M'r Smith, the complainant, call at your place of business, No. 240 Broadway, while you were carrying on business there as aforesaid?

A. I don't recollect, but I suppose he called two or three times.

Redirect by M'r Smith:

70. Q. Was it not the first time I called at your place of business when you were in Fulton street, opposite Church, to inquire about the price of some children's shoes, and you had some very extra ones which you asked $3 a pair for?

A. I never knew he called about any shoes, but I had some calf-skin children's shoes which I recommended.

71. Q. Was not the price $3 a pair?

A. I can't say—very likely—according to size.

72. Q. When you say you saw those English elastic gores in Congress boots brought into your store by a customer, please state where your place of business was at that time.

A. No. 138 Fulton street.

73. Q. Can you say whether those gores were cemented, or woven or knitted?

675 A. They were woven.

74. Q. How do you know they were woven?

A. I judge those to be woven which are the same kind we have been using until quite recently.

75. Q. Please state the difference between a woven elastic web and a knitted?

A. I know nothing about knitted.

76. Q. What color were those gores in that gentleman's boot you saw in Fulton street?

A. They were black.

77. Q. What was the name of that gentleman?

A. I don't know; I don't know that I ever heard his name.

78. Did he bring the boot to you to have it repaired in any way?

A. I think so, but am not certain.

79. Q. What repairs was wanting to the boot?

A. I have no recollection at all except that the shoes were shown me, and they were the first English shoes of the kind that I had seen; it struck me that we were the first here, and they were ahead in superiority.

80. Q. Was the boot on the gentleman's foot when you saw it?

A. No.

81. Q. How long had you it in your possession?

A. I have no recollection of looking at it but once; I don't think we had it in our possession long.

82. Q. Was that the first elastic gore you ever saw in Congress boots?

A. Yes.

83. Q. As you say you have no knowledge of weaving, and only saw that gore in the boot once, what method have you of judging that it was made after the same manner as gorings are made now?

A. The goring that is made now looks exactly like it, except the Terry goring.

84. Q. When was your first attention called to your mind how that English gore was made in that Congress boot?

676 A. Not any time in particular. I saw the article, looked at it with admiration, saw that it was wove.

85. Q. Can you state in what manner it was wove?

A. I think the webbing is of rubber and the filling is wove right on to it. I might be mistaken, but don't know how I can be.

86. Q. Might it not have been knitted work, the same as stockings?

A. It looks to me too firm for that.

87. Q. Have you any knowledge of weaving and how fabrics are put together?

A. I don't suppose I am acquainted with very difficult weaving, but plain weaving I could do.

88. Q. Please state what plain weaving is, as you say you understand it.

A. It is warped and a reed is attached to it to throw it apart that shuttles may go through.

89. Q. Please state what part is thrown apart that shuttles may go through.

A. The warps.

90. Q. What have you attached to the loom besides the reed and the beam?

A. I don't think of the names, but I know about how it looks.

91. Q. Please state how it looks.

A. I am not good at drawing, nor am I good at describing.

92. Q. Please state how much of the warp parts so that the shuttle may pass through.

A. In plain weaving about half and half.

93. If you was to work it by hand, how many treadles would you have attached to the loom to work it?

A. I would have two.

94. Q. How do you separate the warps one part from the other?

A. One gearing draws up and the other down; that is the way it parts.

95. Q. Please state what you call the gearing and how much there is of it.

677 A. What I call gearing is linen thread tied in loops and the warps passing through so as to pull one half of the warp up and the other half down; that forms an opening for the shuttle to go through.

96. Q. Do you know of any other kind of weaving besides plain weaving?

A. I don't think I do.

97. Q. Was that gore that you saw on that English boot plain weaving or some other kind of weaving?

A. Some other kind of weaving.

98. Q. As you have just said that you did not understand any other kind of weaving but plain weaving, and that English boot was another kind of weaving, was it not a kind of weaving that you did not know anything about?

A. I don't understand how it was done.

LORIN BROOKS.

Subscribed and sworn to before me this 23d March, 1870.

R. E. STILWELL,
Examiner, &c.

Adjourned until Friday, 25 inst., at 10 a. m.

FRIDAY, *March* 25, 1870.

Present, counsel on both sides.

WILLIAM SMITH, recalled on the part of the complainant, deposes and says as follows:

The complainant states in rebuttal of the testimony of Lorin Brooks, that the first time he ever saw the said witness or had any conversation with him was when he kept his place of business in Fulton street, New York, opposite the end of Church street; that he called in his store
678 to price some children's stitched shoes in the year 1852 or 1853; that he entered into conversation with said Brooks about his patent, and showed him samples of elastic webbing made under his patent; Brooks replied that he thought it was no good, and would rip out; he further said he had never seen such kind of webbing used, and asked me who was buying it of me; he said he was using Day's wide webbing and knew it was good, and would satisfy his customers; my kind of webbing he could not tell if it would be satisfactory, and he would wait to see how it took in the market, and he never purchased any webbing from me at any time. In one part of said Brooks' testimony he said he was making very early Congress boots according to the Dupont & Hyat patent, but said patent was wide in single strips or gores, stitched together between the rubber cords. When asked who supplied him with the material for the gores, he said Horace H. Day supplied them, made under Goodyear's patent. Goodyear did not take out his patent for corrugated goods until March, 1844, or June, I think. Goodyear first sold the right to make corrugated goods to a gentleman of the name of Suydam. He kept the right for near 12 months, and made goods under the same. Then M'r Suydam resold it back to Goodyear. Goodyear afterwards, in 1845 or 1846, sold the said right to Horace H. Day. At the time Lorin Brooks testified that Horace H. Day supplied him with the gores for the said boots that he was making at so early a date, said Horace H. Day, about that time, was making children's boots and shoes in New Brunswick, N. J., and from information and belief was peddling them about in the city of Newark, N. J.; and this knowledge testified to about English boots and shoes being brought here on gentlemen's feet, from England, after 20 years' knowledge of the boot and shoe business—and being amongst them from the stores of Maine to the Rocky Mountains (if there is any one there), have not heard until recently of any Congress boots being brought over to this country with elastic India rubber in them, at that early date; and said Brooks in his evidence has testified to being supplied by Horace H. Day, with the material,
679 several years before said Day made such goods or had them for sale.

Counsel for the respondent objected in season, while the above testimony was given, to its competency, on the ground that Lorin Brooks was the complainant's witness, and his testimony could not thus be contradicted; also that the requisite foundation had not been laid by the requisite interrogatories, and also that the testimony given by the com-

plainant is largely either of record or hearsay, and otherwise incompetent.

The complainant replies that Lorin Brooks is opposed to him in his patent; and complainant has to take his opponent's testimony and examine it the same as if he were cross-exam'ing the said Brooks; and the majority of complainant's witnesses are united in a ring to oppose his patent. Furthermore, when he brings up such witnesses to testify in his behalf, being known to the respondent's counsel, he invariably gets in conversation with such witnesses before he (complainant) can examine them and get their evidence.

W'M SMITH.

Subscribed and sworn to before me this 25th of March, 1870.

R. D. STILWELL,
Examiner, &c.

JOHN SMITH, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation.

A. John Smith; age 66; I reside in South Brooklyn; I keep boats.

680 2. Q. Were you ever a weaver; if yea, when did you first commence in that business, how long did you continue in it, and where?

A. I was; I was brought up a weaver; I continued to be a weaver until within the last 15 years, and for the last 15 years I have been keeping boats; I have followed the business of a weaver in England and in America.

3. Did you ever work in the factory of Dodd & Wakeman, Newark, N. J.?

A. Yes.

4. Q. Was it under the direction of the complainant?

A. Yes.

5. Q. Please state what was your first employment under complainant's direction when you first went there.

A. I was engaged for to go to help to put the machinery to work, and was engaged on them after.

6. Q. How did the machinery work when they were first put up?

A. Very bad.

7. Q. Please state what was the reason of it working so badly.

A. The engine that worked, worked so irregular, it went slow and fast.

8 Q. What was done, if anything, to try to remedy that defect?

A. They put a governor up to regulate her.

9. Q. What did that governor regulate?

A. It did not regulate the machinery.

10. Q. What was said governors attached to?

A. They were attached to two cones.

11. Q. What was the shape and make of these cones?

A. They were large at one end and small at the other.

12. Q. How were these cones connected one to the other?

A. By a belt.

13. Q. Did these cones and these governors remedy the defect of the irregularity of the steam power?

681 A. No.

14. Q. What effect had the irregularity of the steam power on the looms in working them?

A. When they went too fast they would not work, and when they went too slow they would not work.

15. Q. Had it any effect on the making of the goods? If yea, state what it was.

A. When it went too fast it spoiled the goods, and when it went too slow it spoiled the goods.

16. Q. Did you make any suspender webbing while you were there?

A. Yes.

17. Q. How was the India-rubber enclosed in that webbing which you made?

A. In cotton.

18. Q. Was it enclosed top and bottom with warp threads interlocked with weft threads?

(Objected to as leading.)

A. Yes.

19. Q. Did you see any one else making suspender webbing in the same room that you were in at that time?

A. No.

20. Q. Did you see a man there at work by the name of McCoy?

A. I knew a man there by the name of McCoy, but I did not see him at work there.

21. Q. Did you see a suspender loom in the same room belonging to Dodd and Wakeman while you were working there?

A. Yes.

22. Q. Did you see any suspenders in the room at the same time?

A. No.

23. Q. Did you always get your wages at the end of the week while you were under my employ in Dodd & Wakeman's factory?

A. Yes, sir.

682 24. Q. Do you recollect me pawning my watch while you were at work in Dodd & Wakeman's factory?

(Objected to as immaterial and leading.)

A. Yes.

25. Q. For what purpose did I pawn my watch?

A. To pay my wages.

26. Q. While attempting to make silk shoe goring in that factory, what kind of material was put in for warp thread?

A. Silk.

27. Q. Was any other goods attempted to be made besides the silk and cotton? If yea, please state what they were.

A. No.

(A bunch of two-fold about No. 20 cotton thread put in, and marked Complainant's Exhibit 200.)

28. Q. What was the widest elastic goring attemp'ed to be made while at Dodd and Wakeman's?

A. It was either four or five inches—I am not sure.

29. Q. Do you recollect the counts of the reed in which these goods were made, that is, the dents of the reed?

A. 16 dents.

30. Q. How does complainant's Exhibit 200 compare with the cotton that was used while you were at Dodd & Wakeman's?

(Objected to as leading.)

A. It is, as near as I can guess now, the same.

31. Q. Please look at Wakeman Ex. No. 3, J. G., jr., New York, and say if you ever made or saw made such kind of goods while you were at Dodd & Wakeman's factory, Newark, New Jersey?

A. No.

32. Q. Please look at Ex. Wakeman No. 2, J. G. jr., New York, compare the cotton warp threads, and say if you ever saw such fine two fold cotton as is in that exhibit.

(Objected to as leading.)

683 A. No.

33 Q. Please look again at said Exhibit, and say how they compare with the rubber threads you saw in Dodd & Wakeman's factory, Newark, N. J.?

A. It would not look like the same.

34 Q. Please state the difference between them, if you can.

A. This looks too fine.

35 Q. Please state how much finer.

A. As fine again.

36 Q. Please put this inch rule to the Exhibit No. 2, and say, if you can, how many dents it has to the inch, or rather, how many rubbe threads it has to the inch.

A. 32, as near as I can count.

37 Q. In question 23, when you said you got your wages every week, did you mean to include that Saturday when I pawned my watch?

A. He paid me my wages.

38 Q. Do you know of your own knowledge what kind of goods I made in Manchester, England? If yea, please state what they were.

A. Fringes and tassels, and gimps.

39 Q. Say if I made any elastic goods, shoe webbing, suspender webbing, or any other kind of elastic goods.

A. No.

40 Q. Did you ever hear or know of any goods being made with a standing warp in the centre while you were in England?

A. No.

41 Q. Where did you first hear or know of it after you came to this country?

A. I have seen it with William Smith. I can't tell the year. It was in Ann street, New York City.

42 Q. Whilst in England had you a practical, general knowledge of the different kind of weaving of small wares made in England?

A. I made fringes, webs and tapes of worsted cotton and silk.

684 43 Q. Had you not opportunity of seeing and knowing what other manufacturers made in and around Manchester?

A. Yes.

Cross-examined:

Cross 44. What kind of boats have you been keeping, and where, during the last 15 years?

A. Skiffs and boats at South Brooklyn.

Cross 45. In whose employ had you been before you went to Dodd & Wakeman's?

A. Hopley's, in Williamsburgh; M'r Milwood, 8th avenue, New York.

Cross 46. By whom were you employed as a weaver after you left Dodd & Wakeman's?

A. I did not work at the business since.

Cross 47. What were the looms you helped to put up in Dodd & Wakeman's intended for?

A. Suspender web and shoe web.

Cross 48. What were they first used for?

A. One for suspender web, and the other for shoe web—silk.

Cross 49. Which was put up first?
(Objected to as immaterial.)
A. The silk for shoe web. They were both pretty nearly alike.
Cross 50. Was the first shoe web made wholly of silk and rubber?
A. Silk, rubber, and cotton.
Cross 51. What covered the rubber warps?
(Objected to as new matter.)
A. The warp covered the rubber on one side and the cotton on the other.
Cross 52. Was that the case with all the shoe web made there by M'r Smith?
685 A. Yes, while I was there.
Cross 53. How long were you there?
A. Three months.
Cross 54. When you left did M'r Smith remain?
A. Yes, sir.
Cross 55. Was the shoe web made while you were there all alike?
(Objected to for the reason that he was making suspender webbing.)
A. Yes, only two colors, black and drab.
Cross 56. Did you make any yourself?
A. Yes.
Cross 57. Are you not rather deaf, so that you have to be spoken to close to you, in order to hear distinctly?
A. Yes.
Cross 58. Did you make both kinds, black and drab?
A. Yes.
Cross 59. How large a part of the time were you engaged in making shoe web while there?
A. Between two or three weeks.
Cross 60. How long were you in putting up the looms?
A. When I went there they were on their feet; but to put them to work took about two months.
Cross 61. Did you make any suspenders while there; if yes, how long?
A. Yes; two or three days.
Cross 62. Was that all the time, to the best of your recollection, that you were engaged in making suspenders while there?
A. That's all.
Cross 63. What kind of suspenders were they?
A. Cotton elastic.
Cross 64. Were they made in the ordinary way in which suspenders were then made?
A. Yes.
Cross 65. How was it that in the shoe web the silk covered the rubber on the one side and the cotton on the other?
686 A. The rubber was worked on a shaft to rise with the silk.
Cross 66. Did the cotton fall with the rubber?
(Objected to as the question is unintelligible.)
A. The cotton was the weft—went across.
Cross 67. Did not the silk warp fall alternately below and above the rubber warps?
(Objected to as the question is a contradiction of itself, and not intelligible.)
A. No.
Cross 68. Did no portion of the silk warp open below the rubber warps when the rubber warps were raised to form a shed for the passage of the shuttle?

A. No.

Cross 69. What held the weft threads against the rubber warps on the bottom of the web?

A. The weft is held by the selvage, or it would not be a narrow piece of cloth.

Cross 70. When the weft threads went across underneath the rubber warp, was there anything which interlocked with them to hold them against the rubber warp threads?

A. The binding shaft.

Cross 71. What was the binding shaft?

A. It was tin shafts of wood, with mails in the centre, for the warp, the silk, to pass through. That was one of the binders.

Cross 72. The binding warp threads were silk, then, were they not?

(Objected to as leading.)

A. Yes.

Cross 73. Did those binding warp threads interlock with the cotton weft below the rubber cords?

(Objected to as it is an impossibility to bind the weft threads below the rubber cords with binders.)

687 A. Both below and above the rubber warps.

Cross 74. Did they bind just alike, both below and above?

A. Yes.

Cross 75. Did the warp-threads go below the rubber cords as well as above the rubber cords?

A. Only the binders.

Cross 76. Were there warp-threads that did not act as binders?

A. Yes.

Cross 77. Did they always remain on the face of the goods?

A. No.

Cross 78. Where did they go when they were not on the face of the goods?

A. They went to the bottom.

Cross 79. To the bottom of the goods, do you mean?

A. Yes.

Cross 80. Did they go as often to the bottom of the goods as the top?

A. No.

Cross 81. Were there any of the silk warp threads that did not go a part of the time to the bottom of the goods?

A. Yes.

Cross 82. Where were they placed with regard to the rubber cords or warp-threads?

A. They were placed below if they were wanted, and above if they were wanted.

(Complainant asks counsel to ask witness if he understands what kind of goods he is describing, whether silk goring, cotton goring, or suspender webbing.)

Cross 83. What kind of goods do you understand you are now describing—silk goring, cotton goring, or suspender webbing?

A. Both suspender webbing, cotton webbing, and silk webbing.

688 Cross 84. By cotton webbing and silk webbing, do you mean webbing for shoe-gores?

A. Webbing for shoe-gores.

Cross 85. Were both of these kinds of webbing made at Dodd and Wakeman's while you were there?

A. Suspender webbing and silk and cotton shoe webbing were made while I was there.

Cross 86. In the cotton shoe webbing, made while you were there, were the threads all cotton, except the rubber?

A. I did not mention cotton shoe webbing, but cotton suspender webbing and silk and cotton shoe webbing.

Cross 87. Was there any shoe webbing made while you were there, in which all the threads, except the rubber, were of silk?

A. I believe there was; I am not positive.

Cross 88. Are you sure there was none in which all the threads, except the rubber, were of cotton?

A. Yes.

Cross 89. Were the warp-threads, except the rubber warp, all between the different rubber warp-threads in the shoe webbing?

A. Yes.

Cross 90. Were they all between them, as in the following sketch: the larger dots in the sketch representing the rubber cords, and the smaller ones the silk warp-threads?

- . . . - . . . - . . . - . . . - . . . -

(Complainant says, to save time, he will admit that all the warp-threads in the shoe-goring, made at Dodd and Wakeman's, were between the rubber cords, excepting when made with a white cotton back, the white cotton warp ran longitudinally with the rubber cords, and complainant asserts that that was the fact.)

A. The same as that; the binders between the rubber.

Cross 91. Were not all the fibrous warp-threads binders?

689 A. Yes.

Cross 92. Then did not all the fibrous warp-threads go as often below the rubber warp-threads as above them?

(Objected to, as with a rising and falling of the warp the binding threads rise and fall with the rubber warp, neither above nor below.)

A. Yes.

(Adjourned for half an hour for lunch.)

Cross 93. If all the fibrous warp threads lay between the rubber cords, could anything, except the weft-threads, cover the rubber cords at top and bottom?

(Objected to, as the complainant, to save time, has admitted that there was nothing but weft-thread at the top and bottom of the rubber cords.)

A. Yes; the warp could cover it.

Cross 94. Did the warp cover the rubber cords in the shoe webbing while you were at Dodd & Wakeman's under the complainant?

(Same objection.)

A. No.

Cross 95. Do you mean to say that, in fact, the rubber cords were covered by the weft-threads only?

(Same objection as counsel in seeking to prove what has been already admitted, and wants no proof.)

A. Only.

Cross 96. What did you mean by your answer to the 51st and 52d interrogatories, when you say the warp covered the rubber on the one side and the cotton on the other?

A. I was asked if the rubber could be covered with warp, and I said yes; but now I am asked if the warp in the weft covered the rubber made at M'r Dodd's, and the weft covered the rubber.

690 Cross 97. Have you heard the magistrate read your examination from interrogatory 50 to interrogatory 55; if yes, state which answers are correct; the answers to said interrogatories or your last answer?

(The complainant asks counsel in those interrogatories referred to by him, to ask the witness if he understood the questions to refer to shoe webbing or to suspender webbing.)

A. I have heard the magistrate read the question referred to. The first webbing that was made in M'r Dodd's was silk and rubber—the rubbers were covered by the wefts, and they were silk binders. My last answer is correct.

Cross 98. When, since you left Dodd & Wakeman's, was your attention first called to what took place while there?

A. No person has spoken to me on this subject.

Cross 99. When did M'r Smith first tell you that he would want you to testify in this case?

A. He sent me word yesterday.

Cross 100. When had you last seen him before yesterday?

A. I have not seen M'r Smith for seven or eight years before this morning?

Cross 101. Have you talked with anybody about what took place at Dodd & Wakeman's before this morning?

A. No, sir.

Cross 102. When did you first see the bunch of cotton thread, marked Complainant's Ex. 200?

A. This morning.

Cross 103. Who first showed it to you?

A. I first saw it on the table here before it was shown to me.

Cross 104. How many sizes of threads were used at Dodd and Wakeman's in making elastic shoe webbing?

A. I could not say the counts. It is so many years now that I do not recollect.

691 Cross 105. Were there not a number of different sizes tried?

A. Not while I was there; there was only one size.

Cross 106. How many sizes of silk?

(Objected to, as there are no such things known in the market as sizes of silk; further, that a weaver is never conversant with them; it belongs to the manufacturer.)

A. There seemed to be only the one size.

Cross 107. What was the name of the silk that was used?

(Same objection as before.)

A. I could not tell that now.

Cross 108. When did you see the standing warp in Ann street?

(Objected to, as witness has already stated he could not tell what year it was in.)

A. I could not tell the year.

Cross 108*a*. What kind of a loom was it in?

A. It was in what they call a swivel loom.

Cross 109. A loom that went by power, or was it a hand loom?

A. It would either go by power or hand.

Cross 110. Was it a kind of loom usually known and called a hand-loom?

(Objected to as immaterial.)

A. No.

Cross 110*a*. Was it being worked at the time?

A. Yes.

Cross 111. Was it driven by power?
A. Well, I believe it was, but I am not certain.
Cross 112. What kind of web was being made on it?
A. It was elastic webbing.
692 Cross 113. Was it shoe goring or suspenders?
A. I could not tell what it was used for; I saw it in the loom.
Cross 114. How wide was it?
A. About an inch.
Cross 115. How many pieces were being made in the loom?
A. I think there were eight; I did not count them.
Cross 116. Was it before you went to Dodd and Wakeman or after you left?
A. After I left.
Cross 117. How long after?
A. I could not tell.
Cross 118. About how long after?
A. It might be 3, or 4, or 5 years after.
Cross 119. Have you any distinct recollection of the number of dents in the inch in the reed in making shoe gores at Dodd and Wakeman's?
A. I have not the least; not now.
Cross 120. Did M'r Smith call your attention to the number this morning?
A. Not of dents; he did not.
Cross 121. Did he call your attention to the number of rubber cords to the inch?
(Objected to, as complainant states he had repairs of shoe goring made at Dodd and Wakeman's to call witness's attention to.)
A. Yes.
Cross 122. What did he say about them?
A. I forget, sir.
Cross 123. Could you at this distance of time undertake to recollect distinctly the size of thread, whether silk, cotton, or rubber, used at Dodd and Wakeman's in making shoe goring?
A. I could not.
Cross 124. Were you in M'r Smith's employ in Manchester, England?
693 A. No.
Cross 125. Were you ever in his shop in Manchester, England?
A. Yes, sir.
Cross 126. Did you know him there?
A. Yes, sir.
Cross 127. When was that?
A. In 1848 or 1844; I am sure of 1843.
Cross 128. When did you come to this country?
A. In 1844, in November.
Cross 129. When did you leave Manchester, England?
A. I left it on the 1st of November, 1844.
Cross 130. Was M'r Smith manufacturing in Manchester at that time?
A. Yes, sir.
Cross 131. Where was his place of business?
A. His warehouse was in Church street.
Cross 132. Where was his manufactory?
A. I could not tell where he had his manufactory then.
Cross 133. Where was it when you were in it?
A. I was in one place in Salford.

Cross 134. Where was his manufactory in Manchester when you were in it?

A. I forget it now; I am trying to think of it.

Redirect:

135. Q. During your cross-examination, have you not confounded the description given the suspender web and the shoe web together?

(Objected to as leading.)

A. Yes, I have.

136. Q. Can't you recollect sufficiently to remember, while at Dodd's & Wakeman's, whether the cotton threads were coarse or very fine?

(Objected to as leading, and as having been already interrogated about in the direct examination.)

694 A. Yes; I recollect them being pretty coarse, and not so fine.

137. Q. In your cross-interrogatories you said I was manufacturing in Manchester on the 1st of November, 1844, when you left there. Were you aware that I had sold out the machinery and looms and all the effects of the warehouse to my then partner, and he continued to carry on the same business after I left?

A. I do not recollect it; I did not hear it.

Recross:

Cross 138. In what respect did you confound shoe and suspender webbing?

A. I thought that when I was asked the question he was alluding to suspender webbing.

Cross 139. What question?

(Complainant requests counsel to read the question to witness.)

A. I can give no further answer.

JOHN SMITH.

Subscribed and sworn to before me this 25th day of March, 1870.

R. E. STILWELL,
Examiner, &c.

JAMES A. REILEY, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is James A. Reiley; age, 49; I reside in the city of New York; I am a weaver.

2. Q. How long have you been a weaver?

A. Off and on since 1841.

695 3. Q. Have you ever worked at the factory of Dodd & Wakeman's, Newark, N. J.? If yea, say when you went there, and about what time of the year you came away, and what year it was.

A. I have. I went there, I think it was in January, 1849, or 1850. I came away in July of the same year.

4. Q. Was I (the complainant) there at the time you came, and you came to work for me?

A. Yes, sir.

5. Q. Do you recollect a pair of governor balls and a pair of cone pulleys to regulate the speed of the machinery being in one corner of the building?

A. Yes.

6. Q. Was the steam-power in that building regular or irregular?

A. It was irregular.

7. Q. Did the irregular speed interfere with the working of the machinery and the making of the goods?

A. Yes, sir.

8. Q. Was there a suspender webbing-loom belonging to Dodd and Wakeman in one corner of the room and worked upon by a man named McCoy?

A. There was a loom there, a suspender loom; there was a man named McCoy, but whether he worked on the loom I am not able to state, it is so long ago.

9. Q. Can you state what McCoy did, if he did not work on that loom?

A. Well, he worked around the shop jobbing for himself. I never took notice of what he was doing.

10. Q. Did you ever see any suspender webbing in that room?

A. That I could not swear to.

11. Q. Did you ever see any suspender webbing in my No. 12 room?

A. Yes, sir.

12. Q. Can you describe how the India rubber threads in the suspender webbing were covered top and bottom?

A. They were covered with the weft.

696 13. Q. Describe what else it was covered with *the* besides the weft.

(Objected to as leading.)

A. It was covered with the binders that were on the warp.

14. Q. Do you mean the binders that lay between the rubber warps or the warp threads on the rubber warps?

(Objected to as leading.)

A. The binders that lay between the rubber warps.

15. Q. Did not the goods appear corded when they were made?

A. I forget whether they did or not. I did not work much on them.

16. Q. Do you recollect how many liddle shafts were required to make the goods?

A. I do not.

17. Q. Were there not warp threads running longitudinally over and under the rubber?

(Objected to as leading.)

A. I don't remember.

18. Q. Look at complainant's Ex. 200, R. E. S., examiner, and say how that compares with the cotton used in Dodd and Wakeman's factory, Newark, N. J.

A. Well, there was some coarser than this. The warp was coarser than this and the weft was finer, soft.

19. Q. When making silk shoe-goring at Dodd and Wakeman's please describe what the warp and weft were composed of, excluding the rubber.

A. The warp was sewing-silk and the weft was tram-silk.

20. Q. What you call sewing-silk in your last answer is it not called in the trade "organize silk"?

A. No, sir.

697 21. Q. Can you state the difference between organize silk and sewing-silk any more than organize is fine and sewing-silk coarse?

A. No, sir, except that sewing-silk is made out of organize silk.

22. Q. While you were at Dodd and Wakeman's was there ever any shoe-goring made with silk weft and cotton warp?

A. No, sir; not to my recollection.

23. Q. Please look at Exhibit Wakeman No. 2, J. G., j'r, New York, and say if there was ever any two-fold cotton used in the factory of Dodd and Wakeman similar to the warp in that exhibit.

A. No, sir; never any as fine as that.

24. Q. Look at the rubber threads in that exhibit and say if you ever saw any India rubber worked in the factory or manufactory similar to what is in that exhibit.

A. No, sir.

25. Q. Are the India rubbers in that exhibit closer together or wider apart or the same distance as those goods made in the factory at New Jersey?

A. I think they are a little closer.

26. Q. How do they compare in size?

A. These are a good deal finer.

27. Q. Please to take that exhibit to the light, and say how many dents to the inch in the reed that exhibit was made in.

A. As near as I could count them it is 20.

28. Q. Do you recollect the count of the reed the shoe-webbing was made in while you were at Dodd & Wakeman's?

A. I do not, sir.

29. Q. Look at Exhibit Wakeman No. 3, J. G., j'r, New York, and say if any such goods were made there.

A. I could not say.

30. Q. Was there ever any goods made anything like the color of that exhibit?

A. Yes, black. I think that was black once.

31. Q. What was the widest goods ever made of shoe goring in Dodd & Wakeman's factory in Newark?

698 A. I think it was 4 inch.

32. Q. Was there ever any other kind of goods made besides cotton and silk while you were there?

A. No, sir; not that I know of.

33. Q. If there had been should you not have seen it?

A. Yes, sir.

34. Q. Was there not a difficulty in procuring money to pay your wages while at Dodd & Wakeman's?

(Objected to as immaterial.)

A. I believe there was two or three times; I am not certain which.

35. Q. Did not Dodd & Wakeman, or some one by their orders, break into the premises and take forcible possession of the machinery?

(Objected to as leading and immaterial.)

A. They broke into the place, or rather they came down the scuttle hole. M'r Smith got excited and went out, and they kept him out.

36. Q. Were you not at work at the time they came in?

A. Yes, sir.

37. Q. Was not I outside at the time, and what did I do at the time to make an entrance?

A. No, sir; you were inside at the time.

38. Q. Who knocked the front door in?

(Objected to as immaterial.)

A. That I cannot swear to, as I was inside, and M'r Smith was outside

39. Q. Was there not a gentleman inside by the name of Haks, and did they not put him out and make the door fast?

(Objected to as immaterial.)

A. There was some gentleman in, but I don't know what his name was.

699 Cross-examination:

Cross 40. At this distance of time, is not your memory indistinct as to all or some of the experiments made at Dodd & Wakeman's factory, and the materials used?

A. Well, I think I am pretty near right in the materials used.

Examination continued on page 593.

700 Circuit court of the United States for the district of Massachusetts. In equity.

WILLIAM SMITH
v.
THE GLENDALE ELASTIC FABRICS COMPANY.

701 Deposition of witnesses on behalf of complainant, taken by W. Grier Hibler, U. S. commissioner, at his office, No. 435 Library street, in the city of Philadelphia, in the State of Pennsylvania, on the thirtieth day of March, A. D. 1870, under the rules of court.

Present, William Smith, esq., complainant.

After waiting three quarters of an hour for the counsel for defendants, M'r Smith calls a witness, leaving him to be examined.

JOHN THORNLEY, being duly sworn, says:

1. Q. What is your name, age, residence, and occupation?

A. John Thornley; aged 57 years; residence, 1730 Frankford Road; and by occupation merchant, 503 Chestnut street, Philadelphia.

2. Q. How long have you been in the India-rubber business, buying and selling India-rubber fabrics made in whole or in part of India rubber?

A. Upwards of twenty years.

3. Q. Please state, if you can, how long it is since you did business with Solomon Doebley?

A. Upwards of twenty years.

4. Q. Do you know his son, Ferdinand Doebley; and, if so, did you ever transact business with him?

A. I do know him, but never transacted business with him; always with his father.

5. Q. Did you ever buy any elastic shoe webbing for shoe goring of Ferdinand Doebley in or about the year 1844, or at any time since that period?

A. I never did; and I never, at that time, knew there was at that time such a man living.

6. Q. Do you recollect in or about the year Congress boots came in use in Philadelphia?

A. I do not.

702 7. Q. Do you recollect the year that Horace H. Day bought the right of Charles Goodyear to manufacture corrugated wide webbing for shoe goring, and what year Horace H. Day brought such goods into the Philadelphia market for sale?

A. I do not.

8. Q. What description of goods did you use to purchase from Solomon Doebley, the father of Ferdinand Doebley?

A. Suspenders made up, ready for market, and suspender webbing by the piece.

9. Q. In those suspenders, bought of Solomon Doebley, can you state how the India rubber was covered?

A. I think the rubber was wrapped with the yarn before it was woven into webbing; I think it was.

10. Q. Can you recollect in what manner the rubber was wrapped?

A. In a spiral manner, winding round in a spiral manner.

11. Q. Can you state in what manner the strands of rubber were woven into the web?

A. I cannot; I am not acquainted with the business.

JOHN THORNLY.

Sworn to and subscribed before me this 30th day of March, A. D. 1870.

W. GRIER HIBLER,
U. S. Commissioner.

M'r Dean states that he notices *that* a statement at the beginning of the testimony, that the complainant states that he waited three quarters of an hour for counsel for defendant, and he states that the parties agreed to meet here at the office of W. Grier Hibler, esq., upon the arrival of the 8.40 train from New York; and that each party should take such testimony as desired, without the giving of notices by either, and that he came here immediately upon the arrival of the train.

703 PHILANDER JAMES MURRAY, being duly sworn, says:

1. Q. What is your name, age, residence and occupation?

A. Philander James Murray; aged 42 years; residence, South Camden, and I keep a new and second-hand furniture store.

2. Q. Are you acquainted with the shoe business; and, if yea, how long have you been acquainted with it?

A. I was in a shoe store from the time I was six years of age till 1857. I was all that time in a shoe store.

3. Q. What relation to you was Col. Joseph Murray, who kept a shoe store No. 53 South 3d street in the city of Philadelphia?

A. He was my uncle.

4. Q. Please state how long you was with him, about the year you first went to him, and about the year you left him.

A. I think it was in 1832 or 1833 I went there, and was with him all the time till he died on 4th March, 1853. The business is still carried on by my two brothers and myself.

5. Q. Was you well acquainted with all the work that was made and sold in the store of Col. J. Murray, your uncle?

A. Yes, sir; I treed all the boots and shoes in the store, and did pretty much all the finishing of them, and also delivered all the work.

6. Q. Can you recollect in what year Congress boots came into use in Philadelphia?

A. I could not state the exact time, but they were in use in 1850, 1851, 1852, 1853, and so on; by referring to our books I could tell the exact time.

7. Q. Do you recollect the first using of woven elastic webbing for gores for Congress boots? If yea, state the exact time, and who you purchased it from.

A. In 1852 and 1853 the woven gore was purchased of M'r Smith, here.

704 8. Q. Do you recollect a suspender-maker coming round with woven goring? If yea, please state when it was, and whether you purchased any of it.

A. I remember distinctly a man coming round with that gore; to the best of my knowledge it was in 1854; I remember distinctly that it was

an inferior article. There was not a great deal bought of him; it was thin and baggy.

9. Q. Was the first elastic gore you purchased that which you purchased from me?

A. Yes, sir.

10. Q. You are positive that there was no gore purchased by your house as far back as 1844, are you?

A. Not to my knowledge. Congress boots were not in use at that time.

PHILANDER J. MURRAY.

Sworn to and subscribed before me this 30th day of March, A. D. 1870.

W. GRIER HIBLER,
U. S. Commissioner.

And now, at 12.40 o'clock m., adjourned till 3 o'clock p. m.

Cross-examined by M'r Dean:

Cross 1. Have you your uncle's books from 1842?

A. I have them as far back as 1846, and that is the farthest back that I can find. I find in my brother's handwriting, under date of May 7, 1847, a charge of one pair Congress, $4.50; under the head, "April 27, 1847, one pair patent leather gaiters, elastic gore, $5.50;" under the head June 26, 1847, one pair Congress gaiters, £1.50; July 3, 1847, one pair Congress boots, $3.50; a similar charge July 7, 1847; July 14, one pair ditto; July 17, do. The two oldest books I find cover a period
705 from '46 to 1857, and I find frequent entries, increasing as time went on, in both books, of charges of Congress boots and Congress gaiters, with elastic gores; all boots with elastic gores in, whether the elastic fabric was woven or pasted goods, went by the same name of Congress boots, and would be charged in the same way.

Cross 2. Have you any of your uncle's books containing entries of the purchases made by him of webbing for elastic gores?

A. No, sir; I have not.

Cross 3. Have you any memoranda in your possession of any kind fixing the dates of purchases of any kind of elastic goring by your uncle?

A. No, sir; I have not.

Cross 4. Have you any distinct memory of any particular instance of the purchase of shoe goring by him?

A. Not to dates. I was present very often when it was bought, but have no way of fixing dates. Sometimes it would be bought when I was not present.

Cross 5. In your direct testimony you say that Congress boots were used in 1850, 1851, 1852, and 1853. Had you examined your books beyond that period when you made the statement?

A. No, sir; I had not further than that period. I examined the books from 1851 last evening, but did not examine the one beginning at 1846 till I went to get them to-day.

Cross 6. You speak in your answers of having purchased elastic webbing for shoe gores from M'r William Smith, the complainant. Have you any way of fixing the time when such purchases were made?

A. No, sir; I could not fix the time. I did not tax my mind with it.

Cross 7. Your direct testimony placed those purchases in the early use of Congress boots, namely, in 1852 and 1853, two of the four years named by you. State whether your best recollection and belief is that the purchases of M'r Smith were among the first years of the use of Congress boots.

706 A. About 1852 and 1853, as near as I can bring it to mind.

Cross 8. Is there anything that brings it to your mind except that it was in the early history of Congress boots?

(Objected to by M'r Smith, as he has not stated in his direct examination that the goods purchased of him was in the early time of the use of Congress boots.)

A. What I remember is that in 1854, I think, two different parties wanted to sell us gore, and it was before the time that we purchased from M'r Smith.

Cross 9. How do you fix that it was in 1854 that two parties wanted to sell you goods?

A. I judge that that was about the time that the weaver or suspender man came with his, which was defective and loose. I took no date of it, but judge that was the year.

Cross 10. If you took no date of it what makes you judge that that was the year, and may you not be mistaken?

A. I don't think I am.

Cross 11. Is there any circumstance of any kind to enable you to fix the date, or is it a mere matter of judgment on your part?

A. There is no circumstance that I can remember to bring it to my mind, but to the best of my knowledge that was the time.

Cross 12. State what has become of the earlier books of your uncle.

A. That I could not tell, for they have never been in my possession; they were left in the administrator's hands.

Cross 13. Have any of them been destroyed to your knowledge?

A. Some of them have been torn up and destroyed. I seen part of one to-day when I went after these; there was just a few pages left. They moved from Philadelphia to my house in Camden; they have been there two or three weeks. They had a tub full of day-books, measure-books, &c. I did not see any of later date than these here. I did not look.

707 Cross 14. Did you find these in Camden last evening?

A. I found them in Philadelphia, at 9th and Lafayette streets.

Cross 15. Where are the measure-books?

A. They must have them at Wilmington, Delaware, or else they are destroyed. His wife told me that they had taken some of the books to Wilmington with them. John's wife it was.

Cross 16. On how many occasions did your uncle buy web for shoe gores of M'r Smith?

A. Several times. I could not state the number exactly. I did not tax my mind.

Cross 17. Did M'r Smith bring it about for sale with him?

A. Yes.

Cross 18. How much did he bring with him at the time?

(Objected to.)

A. I could not say; it has been so long ago.

Cross 19. What did he carry in it?

(Objected to.)

A. I don't remember.

Cross 20. Did he have samples of different kinds with him?

A. I don't remember his having any but the wove gore.

Cross 21. Did he have more than one kind of woven gore?

A. I don't think that he had. If he did have I don't remember.

Cross 22. Did he bring at any time, or all times together, more than one kind of woven gore?

(Objected to.)

A. I don't remember of his bringing but one kind.

Cross 23. What was it made of?

708 A. I cannot tell. It was called woven gore; that is all I know about it. I have handled a great deal of it in my time.

Cross 24. Was it silk or cotton gore?

(Objected to.)

A. Cotton gore I should judge it was. It appeared to be one kind. I did not take particular notice of it.

Cross 25. Can you tell how it was woven as compared with the ordinary goring of present use?

A. No, sir; I cannot tell.

Cross 26. Who was the man that you think brought web there to sell in 1854?

A. I couldn't tell who he was further than the remark was made that he was a suspender maker or gore maker, or something of that kind, and that some of it was bought and tried. I remember that distinctly.

Cross 27. Of what was that web made—silk, cotton, or both?

A. I judged it to be a cotton gore, but I don't pretend to know anything about how it was made.

Cross 28. What was its color?

A. Black.

Cross 29. What was the color of that purchased of M'r Smith?

A. Dark color; black I suppose you would call it. It all looked to be of one color.

Cross 30. Of whom did your uncle purchase his first elastic goring that he used?

A. I couldn't say positively.

Cross 31. Have you any recollection about it?

A. I have seen it bought of this gentleman here and the suspender man; nobody else.

Cross 32. In my last question I meant to inquire as to all kinds of elastic goring, whether woven or pasted. Does your answer relate to all kinds?

A. Yes, sir; it relates to the wove gore, what I always called it, and what we always termed it.

709 Cross 33. What was the gore used in 1847?

A. The woven gore.

Cross 34. What was the gore used in 1848?

A. The woven gore, what we always called; whether it was wove or not I couldn't say.

Cross 35. Was it silk or cotton?

A. Cotton, to the best of my knowledge.

Cross 36. Did it differ in any respect from that purchased of M'r Smith, the complainant; if yes, how?

A. No, sir; I don't think it did; all one kind, as far as I could judge.

Cross 37. Can you remember any person of whom your uncle purchased elastic web for shoe gores in 1847, 1848, or 1849?

(Objected to because already answered.)

A. None but him (M'r Smith) and this suspender man.

Cross 38. Can you fix of which of those two persons your uncle purchased first?

A. M'r Smith.

Cross 39. How?

A. For this simple reason; we had been using M'r Smith's gore when this suspender man brought a sample of his gore there and sold it; I remember that plainly.

Cross 40. How long had you been using woven goring, according to your best memory, when M'r Smith first came to sell goring, to your uncle?

(Objected to.)

A. It was about 1852 and 1853, before and back of that time; I can't remember positively; it is too far back.

Cross 41. Do you mean to say that M'r Smith might have sold your uncle farther back than that, without your remembering it?

A. Yes, sir; he might.

Cross 42. Might not your uncle have purchased of others than M'r Smith, farther back?

710 (Objected to.)

A. He might; if he did, I don't remember.

Cross 43. Do you mean to say that all the persons you have any recollection of selling elastic web for shoes to your uncle are M'r Smith and the suspender man you have spoken of?

A. They are the only ones I can remember of.

Cross 44. So that your uncle may have purchased all the web he used prior to 1854 of M'r Smith, the complainant?

(Objected to, as witness has frequently described he had no knowledge of who his uncle purchased web of but me and the suspender maker.)

A. I think he purchased it all of him, but what he got of this suspender man; if he did get any of any one else, I don't remember it.

Cross 44½. Was there any difference in the kind of shoe goring from 1847 to 1855, that you remember, except what you have said of the shoe goring sold by the suspender maker?

(Objected to.)

A. No difference that I remember of.

Cross 45. When was your attention first called to the matter of this deposition, and by whom?

A. It is been about a week or so. M'r Smith subpenaed me yesterday; he called at my store first about a week ago; asked me if I remembered it.

Cross 46. What did he ask you?

A. I cannot say; I know some little he did ask me; he asked me about what time I remembered him coming to my uncle's store; I told him I did; I remembered him as soon as I seen him come into the door.

Cross 47. Did M'r Smith mention any time; if yes, what time?

711 A. I don't remember that he asked me that.

Cross 48. Do you remember that he didn't?

A. To the best of my knowledge, I don't think he did.

Cross 49. Did he say anything about his suspender manufactory?

A. I don't remember; there were but a few words said at the time; there were several people there when he came in, including three or four ladies.

Cross 50. Was there any difference between the woven goring of 1847, 1848, 1849, 1850, and 1851, and the woven cotton goring used at the present time?

(Objected to, as the witness has already answered the question.)

A. I don't know that there was any difference; it might have looked a little lighter or heavier; it all looked to me like one article.

Cross 51. Do you remember at any time using any stuff for gores that was called Day's corrugated goods?

A. I do not; I know it was what we call the wove gore.

Cross 52. Do you remember any kind of goods called shirred goods, and for goring?

A. I don't remember ever examining any kind of goods but what we had in use in our store; I don't remember ever examining any anywhere else; don't pretend to know anything about the qualities of gore.

Cross 53. Do you remember using anything for gore made of two pieces of cloth pasted together, with strands of rubber pasted in between the two pieces of cloth?

A. I don't remember; all I remember is the one kind of woven goring which we used.

Cross 54. Was the business done by your uncle custom work?

A. All custom work.

Cross 55. Was it the best and highest cost work, or what? Describe its qualities.

(Objected to.)

712 A. The shop was always called fine customer work; we never made any low price goods to my knowledge.

Redirect:

11. Q. Was there any circumstance at the time you and your brother took the store in Walnut street, about 1853 or 1854, that you can fix the date when first I called upon you to sell webbing more precisely in your mind?

A. I cannot fix the date.

12. Q. Do you know the meaning of a cemented webbing that is connected together instead of being woven?

A. I don't remember ever seeing any at all; I don't know anything about any kind of gores but what we used in our own store.

13. Q. Do you recollect any gores in Congress boots that were that is not of even surface?

A. I do not remember.

14. Q. Do you recollect of your uncle buying any webbing for Congress boots that was wide, being cut into strips?

(Objected to as leading.)

A. I don't remember.

15. Q. While the gores were cut into shape would they have ravelled out, or been finer than that you used in your early time of making Congress boots?

A. To the best of my knowledge their edges were smooth and straight, not ravelled.

16. Q. The edges of those gores, did they appear straight and smooth as the knife had left them in cutting them?

(Objected to as a leading question.)

A. To the best of my knowledge they were smooth after they were cut.

17. Q. Can you recollect the width or depth that you cut the gores at that time?

713 A. I judge about 4 or 4½ inches.

18. Q. Did you cut those gores yourself, or see the other men cut them?

A. I did not cut them, but I have seen plenty of them cut; I had nothing at all do with that part of the business.

19. Q. Will you please take two envelopes and show the manner in which the cutters placed them on the web to cut them, and cut the envelopes in the shape of the pattern of the gore?

A. We just laid the pattern on the strip of gore and cut one off, and then reversed and cut the other, in order to save wasting gore.

20. Q. Did you cut more than one fold at a time?

A. I don't remember ever seeing more than one fold cut at a time; we were not a wholesale house.

21. Q. Do you know the difference between a cemented web and a woven web?

A. I don't pretend to know anything about the qualities of the web at all, only what we used and handled in the store.

22. Q. If you saw a cemented and a woven web together, could you tell the difference?

A. I think I could.

23. Q. Can you describe it without seeing them together?

A. I cannot.

Recross-examination:

Cross 56. When you saw the gores cut in the manner you have described, were they cut entirely across the strip of webbing from which the gores were cut or not?

A. Yes; they were cut, though the web came in narrow strips; it might have been wider, but it came to us in strips.

Cross 57. Was there ever any difference in the webbing used in your uncle's shop so far as the edge being smooth when cut, was cemented, or in any other respect?

A. Not that I can remember; some times I have seen them a little roughed on the edge, but as a general thing they were pretty smooth.

714 Cross 58. Was there any difference in that respect between the webbing used in your uncle's time and that used in the present day?

(Objected to.)

A. I cannot say, as regards that, as I have been out of that business for six or seven years, and don't know anything about the gore in use at the present day; there was no difference up to the time that I left the business.

Redirect:

24. Q. Did you ever use more than one size of gore at your uncle's, in Congress boots?

A. It was generally always the one size; we cut it as we wanted it.

25. Q. When the Congress boots were made was there any difference in the depth and width of the gores?

A. When the gores were cut out of the web, if they were a little smaller than those generally cut, would not they cut the exact size of the gore out of the web?

A. In length, of course, but the width was cut as you wanted them; you had to go to the regular depth.

27. Q. The question was, would not they cut the exact size of the gore out of the web?

A. Yes, they would cut the exact size of the gore; if you wanted it smaller we cut a little off, but we cut the regular depth right through the same.

28. Q. When the gores were cut—I am speaking now of those gores cut in 1846 to 1851—would there be any difference in the edge of that gore in one part from another?

A. I don't know that they would.

Recross:

Cross 58. Do you know what a selvage is to a piece of cloth?

A. The loose edge around the cloth.

715 Cross 59. Take a strip of web for shoe goring two yards long, where would the selvages of the strip be?

(Objected to.)

A. It appears to be all cut out of one piece of stuff; the two edges are as near alike as could be, apparently to me; I never had anything to do with buying or cutting out.

Cross 60. Was there any difference in the edges of the pieces of goring web used from 1846 to 1850 and the edges of the strips used when you were last in business?

(Objected to as leading.)

A. I don't remember that there was. I paid very little attention to it.

PHILANDER J. MURRAY.

Sworn to and subscribed before me this 30th of March, A. D. 1870.

W. GRIER HIBLER,
U. S. Commissioner.

HENRY REIHL sworn.

1. Q. What is your age, residence, and occupation?

A. 46; I live at 418 Poplar street; loom making.

2. Q. When did you first go to loom making, and from whom did you learn?

A. It was in the latter part of 1840; to John Scott, manufacturer of looms.

3. Q. How long did you remain with him?

A. Up to his death, in September, 1852.

4. Q. Who succeeded him in his business after his death?

A. M'r Chambers and myself.

716 5. Q. Has M'r Chambers and yourself continued the business up to the present time?

A. We have.

6. Q. Are you acquainted with the different kind of small ware looms that was made in Philadelphia from 1840 to 1850?

A. There was some few for making tapes and stay bindings and boot webbing.

7. Q. Did you know of any looms made by yourself, or to your knowledge, with rise and falling shuttle brands, to rise and fall in the operation of weaving, between 1840 and 1850?

(Objected to.)

A. I do not.

8. Q. When was the first time you heard or knew of such looms being in operation in Philadelphia?

(Objected to.)

A. The nearest I can say is, previous to 1860 there were looms that M'r W'm H. Horstman had.

9. Q. When was the first that you heard of such looms made with a standing warp and double shuttle operating at the same time?

(Objected to.)

A. I don't know of any, or heard of any, prior to 1856, and those were parts of looms that we made for M'r Smith, the complainant.

10. Q. Have you ever known or heard of any such double shuttle and standing warp or looms being made or used in Philadelphia?

(Objected to.)

A. I do not.

(G. R. R. Objected to.)

Complainant offers in evidence extracts from a book of John Scott, loom-maker, in Philadelphia.

717 11. Q. Look at the handwriting in that book and say in whose handwriting it is.

A. That is the handwriting of John Scott, with whom I served my time.

(The counsel for respondent objecting, the plaintiff offers in evidence the following extract from page 34 of the book as offered in evidence above:)

$100 Philadelphia June 8th 1848

Received from the Marhawanick Manf'g Co to apply on account of looms contracted for June 28th 1848

directions to ship the goods & machinery H B. Ames, E Hampton Mas. Care of Mr W Chapin & Co

Hartford

in W. M. Bird & Co line 54 South Warves.

(Also from page 54 of same book :)

Messrs Edward Smith agent for M William

East Hampton Mas:

1850	To one Loom shipped to New Haven.		
1851			
Jany 2	To 2 looms shipped to New Haven.		
11	To one 4 loom shiped to New Haven.		
20	To one loom shiped New Haven		
29	To one loom ship New Haven		
			1050
	16 Extra Tappits on each 7 loom of 14.		98.00
1851	Lumber for packin Boxes		15.00
Jany 29	Bill delivered		1163.00
	to be paid in 30 days	(in lead pencil)	1135.70
			——.—
			28.71

1050.00
70.00
10.00
5.71
——— (In lead pencil)
1135.71

718 Received March 1, 1851 of Mr Samuel Willston & Co East Hampton Mass Messrs Collady & Brothers note for 500 at 5 days after sight.

draft

Recvd March 1—1850 of Mr Samuel Willston & Co East Hampton a draft on Messrs F. N King & Co for 635. 71 at forty five after date.

Cross-examined by M'r Dean:

Cross 1. To what looms does the entry of June 8, 1848, refer, if you know?

A. I don't know.

Cross 2. What entries are on page 34, immediately preceding said entry of June 8, 1848, the receipt of one hundred dollars?

(Objected to.)

A. I find on looking at page 34, above the former extract:

No 24 Liberty St. N. York.

Mr Horace B Ames To John Scott Dr
Refers to F N King & Market St.
to Cressun Fisher N. Y. Commerce St.

To Second hand loom with Reeds and headdels paid by Dresel	180. 00
To 4 looms 10 shuttles swivel	
1848 for weven suspender at 170	68. 00
Sep 1 To 2 loom sent on by Bards line in ten boxes drawn on through Mr Drexel Third Street Broker at 10 days for the sum of	358. 00

I think that the first item charged of $180 ought to be $80 as $180 is a higher price than is paid for a loom at first cost at the time, and this was a second-hand loom.

Cross 3. Have you any knowledge of this particular loom that you think should be charged $80 instead of $180?

719 A. I have not.

Cross 4. Did you ever see it to your recollection?

(Object to.)

A. No to my knowledge.

Cross 5. Did you ever see any of the looms referred to on page 34?

A. I saw all the looms made by M'r Scott after 1840.

Cross 6. Do you recollect anything about these particular looms mentioned on page 34 in the first entries?

(Objected to, as the witness has already said that he does not.)

A. I don't recollect any more than I have seen all the looms that Scott made after the latter part of 1840.

Cross 7. Where is M'r Scott's cash book?

A. I can't tell whether he had one or not.

HENRY RIEHL.

Sworn to and subscribed before me this 30th day of March, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

JOHN CHAMBERS, being duly affirmed, says:

1. Q. What is your name, age, residence, and occupation?

A. John Chambers; aged 57 years; residence, 1,014 Lawrence street, Philadelphia; occupation, loom-maker.

2. Q. Please state how long you have been a loom-maker.

A. I went to work for M'r John Scott in 1835. That was the first I worked on looms.

720 3. Q. Is he the same John Scott M'r Riehl has just testified about?

A. He is.

4. Q. Who continued the business after M'r Scott's death?

A. Myself and M'r Riehl.

5. Q. When did you first know of, or heard of, or see swivel looms with a rise and fall in shuttles in Philadelphia?

A. The "heard of" is rather indefinite. "The see of" I never see any to my knowledge, not before the year 1860.

6. Q. When did you first hear of swivel looms with a standing warp, with double shuttles, working at the same time, in Philadelphia?

(Objected to.)

A. I heard of them about 1856.

7. Have you ever heard or know of double-shuttle looms with standing warp, being worked in Philadelphia?

(Objected to.)

A. I have not.

8. Q. Please look at this account book and say if you know whose handwriting it is in.

A. It is in M'r John Scott's.

(Objected to.)

Cross-examination waived.

JOHN CHAMBERS.

Affirmed and subscribed before me this 30th day of March, A. D. 1870.

W. GRIER HIBLER,
U. S. Commissioner.

721 SMITH
v.
WHITEHOUSE ET AL.

THURSDAY, 31*st March*, 1870.

Present, M'r Smith and M'r Dean.

JOHN THORNLEY recalled.

Question by M'r Smith:

12. Q. In answer to your second interrogatory, do you mean less than 20 years or over 20 years?

A. I mean over 20 years:

Cross-examined by M'r Dean:

Cross 1. How long over 20 years?

A. I have no means of telling, as, when I moved from my last store, I sold all my books for waste paper.

Cross 2. How long did you trade with Solomon Doebley?

A. I can't tell from my knowledge; I dealt with him several years, but have no means of fixing dates.

Cross 3. Did you not both buy goods from him, and sell goods to him?

A. I bought from him, and sold to him, principally sold to him.

Cross 4. What kind of goods did you sell to him?

A. India-rubber, the raw material just as it was imported, principally in shoes and sheets and slabs, which I suppose was cut up into strings. At one time the of measure of rubber was by the shoes, since then it has gone by weight.

Cross 5. Did M'r Solomon Doebley buy considerable quantities of rubber of you?

A. He would purchase just as he wanted it; it would be called a large quantity in those days, but not now days.

Cross 6. Where was your place of business when M'r Doebley dealt with you?

A. No. 135 and 101 Chestnut street (old numbers).

Cross 7. At what dates were you at No. 135 Chestnut street?

A. Twenty-one or two years back; the only date I can find is January 9, 1847; but I was there four or five years back of that; I
722 am able to fix the time positively at May 26, 1849, when I opened the store at 101 Chestnut street (old number); now 311 Chestnut street.

Cross 8. Look at the piece of fabric now shown you and state whether M'r Solomon Doebley did not sell or show you some fabric like that, and whether you did not at some time while in business at No. 135 Chestnut street go with him, and introduce him to M'r Murray with reference to the use by M'r Murray of said fabric, as goring for Congress shoes or boots?

(Objected to as incompetent as Solomon is not in the answer or amended answer to complainant's bill of complaint.)

A. I am not prepared to say that I took M'r Doebley to M'r Murray; I may have done so; I can't say that M'r Doebley ever showed me such fabric, and at that time I did not deal in goring fabrics, but suspender webbing, about two inches wide; he may shown me this, but I have no recollection of it; I have been with M'r Doebley to see his looms, but cannot give any details, as I know nothing about them.

Cross 9. Did not M'r Solomon Doebley cease to do business with you about February, 1850; did he not fail in business about that time, and were there not two notes of his, given one in January and one in February, 1850, which were unpaid?

(Objected to.)

A. I think it is very likely he did; there were one or two notes, and I tried since I was subpenaed to find them, but was unable to do so.

Redirect:

13. Q. Did not you sell Day's corrugated goods to Joseph Murray?

A. I can't tell; I sold those goods to everybody.

14. Q. Did you sell Day's corrugated goods before you left No. 135 Chestnut street?

723 A. I don't think I ever saw it before that time; I don't know whether had or had not, but rather think he had an agent here.

JOHN THORNLEY.

Sworn to and subscribed before me this thirty-first day of March, A. D. 1870.

W. GRIER HIBLER,
U. S. Commissioner.

WILLIAM MORRIS, being duly sworn, says:

1. Q. What is your name, age, residence, and occupation?

A. William Morris; age, 62 years; residence, 744 Erie street, Philadelphia, and by occupation a bootmaker.

2. Q. Were you ever in the employ of Col. Joseph Murray, on Third street; and, if yea, when did you go to him and how long did you continue with him?

A. I commenced with him in 1828, and continued with him till January 1st, 1851, I think.

3. Q. After you left him in 1851, did you continue in the same store and work on the bench?

A. Yes, sir.

4. Q. From January, 1846, during all the remaining time you were in that store, can you recollect what kinds of elastic gore was used in that store; if yea, please state what kind it was and how wide it was.

A. There was a gore that we used to buy of M'r Thornley that we used to buy by the square or yard.

5. Q. What do you mean by the square; can you state about how wide it was?

A. I mean the square yard; I think it was bought by the square yard; I was thinking of another gum which we did not use at that time

which came in strips; it had been shown there; we never used it to my knowledge.

6. Q. Can you recollect from whom M'r Murray purchased his gore previous to his purchases from M'r Thornley?

A. I have no knowledge of his purchasing from any one but M'r Thornley.

7. Q. Did M'r Joseph Murray's nephews continue the use of such wide gum after his death?

A. Yes, sir.

724 Cross-examined by M'r Dean:

Cross 1. By whom was the gum-elastic webbing that came in strips shown to you?

A. I can't say; it was left as a sample to try is all I can say about it; I was not in the way of using much at that time.

Cross 2. Is that the reason why your memory is not more distinct about it?

A. Yes, sir.

Cross 3. Can you describe the sample left for trial?

A. No, sir, except that it did not appear so well adapted as that which we were using.

Cross 4. Did it resemble the piece now shown you?

(Objected to by M'r Smith.)

A. I never saw anything like this.

Cross 5. Can you give no other description of the piece left as a sample other than you have given?

A. No, I cannot.

Cross 6. What was its color?

A. It was dark one side, and light on one side; the outside was dark.

Cross 7. Was it a piece of woven web?

A. I don't know whether it was woven or not.

Cross 8. What was the material other than the rubber?

A. That I don't know anything about.

Cross 9. Was there any silk in it?

A. I can't say.

Cross 10. Can you tell how the light and dark threads ran, whether lengthwise or across the strip?

A. I cannot.

Cross 11. Who in M'r Murray's store used the web?

A. I used it, the col. used it, and the repairers used it.

Cross 12. Who had most to do with it?

A. The col., in his time, had most to do with it; after that his two nephews.

Redirect:

Question by M'r Smith:

Q. In those narrow strips of webbing, dark on one side and
725 light on the other, was not there a little piece of the fabric turned over on the edges, and the edges appeared dark on both sides?

(Objected to as leading.)

A. I can't say, although I have seen an article of that description in the store.

Recross-ex. de bene esse:

Cross 13. How recently have you seen an article of that description in the store?

A. I can't bring that to my memory at all.

Cross 14. Can you say any more about it than that the edges and both sides were dark, and all but the edges of the other side light?

(Objected to as leading, and that the counsel has misquoted facts.)

A. I have already stated all I know about it.

Cross 15. Question repeated.

(Same objection.)

A. I have no further knowledge about it, except that it was laid aside as we considered it useless.

Cross 16. Question repeated.

(Same objection.)

A. That is all I know about it.

Cross 17. Was it woven web?

A. That I have no knowledge of, not being acquainted with its manufacture.

Cross 18. Can you tell whether the edges were made by a piece of cloth turned over them, or by the back-front threads going round the outer cord?

(Objected to, as the witness has already answered all that he knew about it.)

A. I have already stated all I know about it, not being acquainted with the manufacture of the article.

Cross 19. Question repeated.

(Same objection.)

A. I have already answered that.

726 Cross 20. If you please, answer it again, and say whether you know how the edges of the strip were made black—whether by a piece of cloth pasted over the edges, or by the black weft threads passing round the cord?

(Objected to as leading.)

A. I know not, because I have no knowledge of the manufacture of the article.

WILLIAM MARSH.

Sworn to and subscribed before me this 31st day of March, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

WILLIAM SMITH, being duly sworn, says:

In the year 1852, I came to Philadelphia to try to introduce into the market my patented elastic fabric; I went to almost every manufactory in the heart of the city.

(M'r Dean insists that the questions shall be asked before further testimony is taken.)

1. Q. Whose elastic fabric did you find in use when you came to Philadelphia in 1852?

A. When I came to Philadelphia in 1852, I believe at every place I called they were using Horace H. Day's corrugated elastic web for Congress boots.

2. Q. Did you sell or introduce your own goods amongst any of the manufacturers?

A. I did amongst some of them; some refused to buy, as they thought it an infringement on Day's patent, and might give them trouble; others as no such goods as mine was known in the market, and they couldn't tell whether it would answer the purpose or not; Horace H. Day's goods were known in the market, we like it, and it gives good satisfaction; some of the names that I sold to I recollect, others I do not; one

Zarn, on 4th above Arch, and some other store near him; some manufacturers named Phillips, and English and Son, and a person named Patton, north corner 3d and Market; one named Cadmus,
727 at 8th and Market; in South 4th, below Market street, Wallace and Sons; I think McMullin, Dickerson and Co.; a Frenchman named Bagiot, and a German named Christian, and a man by the name of Benkert; a manufacturer by name of Stratton, another by the name of McIntosh, and another by the name of Ryan, Chestnut, a block or two above 5th street; a man named Van Brunt, in Spruce street above 4th, I think; a man named Knott in Second street; some to Col. J. Murray in Third, below Chestnut street, and several other parties whose names I do not recollect.

(M'r Dean objects to the question, and such parts of the answer as are not responsive.)

3. Q. How often did you sell goods to Col. Murray or his nephews after making your first sale to him in 1852?

(Objected to.)

A. The next sale I made to the nephews was at their store in Walnut street, above 4th or 5th streets, in 1853; the next sale I made to them was, I think, in the early part of 1854.

4. Q. What remarks, if any, were made to them when the sale was made to them early in 1854?

(Objected to.)

A. They said that a suspender maker had been round trying to sell cotton elastic gored goods for Congress boots.

Cross-examined, de bene esse:

Cross 1. What kind of web did you sell, as you have answered, in your answer to second interrogatory, single or Union web; and, if single whether cotton or silk?

A. I sold some of both kinds; the Union web I had was mohair and cotton; the single I had was silk; some I had that was Union, part cotton and part silk.

Cross 2. How much Union did you have, all told?

A. That I can't say. The Union was a majority of what I had; I had three different kinds, cotton, mohair, and silk; some of the mohair and silk, some of the mohair was wove single, or if double both sides
728 alike; some would have cotton on one side and mohair on the other, and the same way with the silk; I will further say, that in some place I sold a yard or two, at other places perhaps half a dozen yards, and at other places a whole piece. M'r Ryan bought several pieces of lasting of 5 or 6 different shades of drab, and gave me orders for so many pieces of a shade, but how many now I can't recollect.

Cross 3. About how much, all told, of Union web did you sell, in what you have said you did in your answer second?

(Question objected to as immaterial.)

A. That I cannot say, as I kept no record; my dealings were all for cash and I kept no books at the time.

Cross 4. Question repeated.

A. I gave the best and most correct answer that I can give to the question; I can't answer any more fully.

Cross 5. Please state about how much you sold in what is embraced in said answer?

A. I had six or eight pieces with me and I had some remnants left on two or three other boards.

Cross 6. How many yards to the piece?

A. That I can't say, but the weight was upwards of one hundred pounds. I don't think there was less than 24 yards in each piece, but can't say. It was four inches wide.

Cross 7. When did you go to Philadelphia on that expedition?

A. The latter part of 1852.

Cross 8. Where was said web woven?

A. It was woven in 37th street, New York, between 8th and 9th avenues.

Cross 9. By whom?

A. Some part by myself, and some, I think, by a German named Adolph Marr.

WM SMITH.

Sworn to and subscribed before me this 31st day of March, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

729 James E. Reiley's examination, continued from page 563.

Cross. 41. Do you recollect any shoe-goring made with silk warp and cotton weft?

A. No, sir.

Cross. 42. Are you not quite confident that there was none made in that way?

A. There might have been before I went there but not after.

Cross. 43. Was not the value of silk in making shoe goring in its use as weft, which gave the appearance of glossiness to the fabric?

A. Yes, certainly.

Cross. 44. Would not it be a waste to use silk as warp, and cover it with cotton weft threads?

(Objected to, as the witness has not described any such goods as having been made.)

A. No, sir; not if you would sell it for that.

Cross. 45. Look at Defendant's Exhibit A, R. E. S., and state whether that is not a piece of shoe-goring with silk weft and cotton warp—whether the weft-threads do not hide the cotton warp, giving it the appearance of being nothing but silk, and whether, if cotton were used as weft and silk as warp, it would not have the appearance of being all cotton, and the benefit of the silk be lost and wasted.

(Objected to, that in the said exhibit wherever the cotton is it hides and conceals the silk weft, and when you have silk in the warp and cotton in the weft it is impossible to conceal the silk warp threads.)

A. I have never seen any made that way. I could not say.

Cross. 46. Were the suspenders that were made at Dodd & Wakeman's while you were there woven in the same manner that a large portion of the suspenders were woven that were at that time and before that time in general use?

730 (Objected to, as the witness was not a suspender weaver, and had not a knowledge of the market to answer that question.)

A. I could not answer that; I did not weave long enough on them to take particular notice of how they were made.

Cross. 47. In your 13th and 14th answers you say that the binding-warps that lay between the rubber cords helped to cover the rubber cords; describe how that could be.

(Objected, as the witness has said he could not remember how they were covered, being so little at the loom weaving them—half an hour or so at a time.)

A. They did not cover the India rubber, because the weft only covered the rubber, and the other warp-threads worked in between the India rubber.

Cross. 48. Is it not your meaning that the fibrous warp-threads interlocking with the weft-threads between the rubber cords caused the weft-threads to cover the rubber cords?

A. Certainly. Keeping the weft-threads in its place on the rubber cords.

Cross. 49. Was not that the plainest method of weaving in which elastic suspenders were made?

A. No, sir; there were a great many ways of making them; every one had his own plan.

Cross. 50. Was not that the simplest method of weaving elastic suspenders?

A. I could not tell, because that was the first kind of elastic I ever wove.

Cross. 51. Were the shoe-webbing and suspender-webbing woven in the same manner?

A. Yes, sir.

JAMES A. REILEY.

Adjourned to Saturday, March 26, 1870, at 10 a. m.

731 SATURDAY, *March* 26, 1870.

Present, counsel as before.

Cross. 52. What kind of rubber was made at Dodd & Wakeman's?

A. It was a rubber on spools.

Cross. 53. Was it vulcanized?

A. No, sir.

Cross. 54. Do you know what vulcanizing is?

A. No, sir; I do not.

Cross. 55. Was anything done to it before it was made into web?

(Objected to as irrelevant, and not in the direct examination.)

A. No more than put on the beams for weaving.

Cross. 56. Do you remember any of it being braided?

A. To my best recollection I do not.

Cross. 57. If the rubber strands had been braided before they were woven would you not have remembered it as well as you can remember the other materials used?

(Objected to, as the witness has already stated that he could not remember.)

A. Well, I don't remember whether it was or not; I could not.

Cross. 58. Do you think that rubber strands could have been put through the process of braiding in Dodd & Wakeman's factory while you were there and then used there, braided, in making shoe-web or suspenders without your knowing it?

(Objected to, as witness has twice stated that he could not remember it.)

A. I never saw any machinery there for doing it that I recollect now. There never was any machinery there for doing it to my knowledge.

732 Cross. 59. What was the irregularity of the steam-power in Dodd & Wakeman's factory?

A. Sometimes it went fast and sometimes it went slow.

Cross. 60. How was it at other times?

(Objected to, as the witness has described all the times as sometimes fast and sometimes slow.)

A. I have answered that.

Cross. 61. How long a time would it go fast?

A. That is more than I recollect now.

Cross. 62. Would it go fast a whole day or a whole week at a time?

A. It varied, fast and slow.

Cross. 63. Would it go fast a day at a time?

(Objected to, as witness has answered it kept going fast and slow, and counsel is merely spinning out his time in useless matters.)

A. That question I have answered.

Cross. 64. Can't you give a more definite answer than you have already done?

A. No, sir.

Cross. 65. Were the governor and cone-pulleys put in while you were there, or were they there before that time?

A. They were there before that time.

Direct resumed by M'r Smith:

66. Q. In making those elastic suspender-webbings in Dodd & Wakeman's factory what kind of a selvage had they?

A. It was what they call a round edge in weaving.

67. Q. How many heddle-shafts would it require to make a round edge, independent of a heddle-shaft, in making the body of the web?

A. It would take four.

68. Q. Please state as near as you can how many heddle-shafts you had in making the body of the web?

733 A. Well, I am not sure whether it was seven or eight.

69. Q. Please look at defendants' Exhibit No. 1, R. E. S., Examiner, and defendants' Exhibit No. 2, R. E. S., Examiner, not observing the different colors, as those suspenders in Dodd & Wakeman's were made all white, and say which is similar to the goods made at Dodd & Wakeman's?

A. Exhibit No. 1 looks more like what was made there.

JAMES A. REILEY.

Subscribed and sworn to before me this 26th day of March, 1870.

R. E. STILWELL,
Examiner, &c.

ELIZA B. HULL, called and sworn as a witness on the part of the complainant, deposes and says:

1. Q. Please state your name, occupation, and residence.

A. Eliza B. Hull; I am matron of the Union Home School at Mott Haven, and reside there.

2. Q. Please state in whose employ you were from May, 1848, to May, 1849, in New York City?

A. M'r William Smith's.

3. Q. Had you the charge of his warehouse, corner of Maiden Lane and William street, at that time?

A. Yes.

4. Q. Was not all the goods made in his factory sent to the warehouse, and then entered in a book called the stock-book?

A. I suppose they were; I couldn't answer positively; it is a mere supposition.

5. Please describe what kind of goods came to the warehouse from the factory?

734 A. Silk, cotton, and linen fringes, and some silk gimps.

6. Q. Did you ever see, or hear, or know of any India rubber elastic rubber goods coming from the factory or sold by complainant?

A. No.

7. Q. Did you ever know complainant at that time, or any other time, peddling elastic rubber goods about the streets in a basket, or any other kind of goods?

(Objected to as leading.)

A. No.

8. Q. Do you know at that time if I employed any one to do my out-door business?

A. Yes; I have forgotten the person's name?

Cross-examined by M'r Dean:

Cross 9. Did the goods made by M'r Smith while you were with him require the use of fine threads?

A. Not particularly fine.

Cross 10. How fine was the finest threads used?

A. I could not remember; I should think a middling size; I don't think I could tell, it is a long time ago; I didn't charge my mind with it.

E. B. HULL.

Subscribed and sworn to before me this 26th March, 1870.

R. E. STILWELL,
Examiner, &c.

JOHN VARLEY, called and sworn as a witness on the part of the complainant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

735 A. John Varley; 60 years of age; residence, 41 12th street, South Brooklyn; and am a clerk.

2. Q. What was your former occupation before you went to be a clerk?

A. Weaving, and was brought up to it.

3. Q. In whose employ were you in the years 1847 and 1848, and until June or July, 1849?

A. In yours, W'm Smith.

4. Q. Had you the care and superintendence of my factory in those years?

A. Yes.

5. Q. Please describe what kind of goods I made and sent down to the warehouse?

A. They consisted of parasol dress-fringes, made of silk, cotton, and linen, and they were all sent down from the factory to the wareroom by me.

6. Q. Did you ever know me to make or buy or sell or peddle about in a basket woven India rubber goods?

A. No.

7. Q. Was any such India rubber goods made in Pearl street in 1849, or after I carried my machinery to 15th street, until you left my employ in July, 1849?

A. No.

8. Q. Do you recollect the accident that occurred to me about that time by the trap-door giving way at that factory?

A. Yes, sir.

9. Q. Did you leave my employ at the time of that accident?

A. Yes.

Cross-examined by M'r Dean:

Cross 10. On what day in 1849 did you leave M'r Smith's employ?

A. I can't tell you.

Cross 11. Did you, up to the time you left in July, 1849, have the superintendence of M'r Smith's business in his factory, and know what was going on there?

736 A. Yes.

Cross 12. Were you in the factory after that time during 1849; and, if so, how often?

(Objected to as leading.)

A. No.

Cross 13. Up to the time of your leaving, had any attempt been made in M'r Smith's factory, or by M'r Smith, to your knowledge, to make elastic webbing of any kind; if yes, tell all about it?

A. No.

Cross 14. Had nothing been said on the subject?

A. No.

Cross 15. Did you see M'r Smith frequently in 1849, and after you left his employ?

A. I don't believe that I saw M'r Smith after I left him for some three or four years.

Cross 16. At the time you left him what machinery did he have?

(Objected to as immaterial.)

A. There was two looms in working condition, and I think two other looms not on their feet, and other machinery.

Cross 17. For the making of what kind of goods were said looms adapted?

(Objected to as indefinite.)

A. I couldn't answer it in that shape; I can answer what we were making at that time; we were making cotton tapes for printing-presses.

JOHN VARLEY.

Subscribed and sworn to before me this 26th March, 1870.

R. E. STILWELL,
Examiner, &c.

737 FRIDAY, *April 1st*, 1870.

Present, counsel on both sides.

Complainant offers in evidence a pass-book of John W. Corlies & Co. during the year 1854, being then agent for complainant, marked Exhibit 300.

ADOLPH MARR, called and sworn as a witness on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Adolph Marr; 41 years of age; reside at 317 West 50th street, New York City, and am in the wall-paper and window-shade business.

2. Q. If you have ever been in my employ, please state where it was and when it was.

A. I was, in 1852; on the 11th October I commenced in 37th street, near 9th avenue.

3. Q. Do you recollect a weaver by the name of Eabray working on a garter loom, next loom to yours? If yea, please state what kind of workman he was and in what manner he left there.

A. I did know him. M'r Eabray and myself were single men at that time. He came there in 1853. I worked on the wide loom, while Eabray was set on the small loom to make narrow goods. The loom that I was working at he was not able to attend it for a moment, and all the goods that he made on that narrow loom (which was very little) he would not have been able to do if I would not have been at his side all the time, instructing him. He was a very nice young man, and we were very friendly. The only reason that I can remember of his being sent away was, that I told M'r Smith that he could not make the goods right. M'r Eabray might have been a very good weaver on his home kind of a work, but he was not worth a sixpence on that kind of machine. We used to make twenty bands on one machine at once, and by what
738 I could judge, having been brought up in that business, he was not able to do over six.

4. Q. Did he ever offer to instruct you and to inform you how to make your selvages on the wide loom in making goods for Congress boots?

A. As I stated before, I worked on the heavy machine, or on the loom where we make goods for Congress boots, which would have been an impossibility for him to attend to that machine two minutes, or to instruct me.

5. Q. Did he instruct you, or offer to do so?

A. Never.

6. Q. Did he ever say to you that you were making your selvages crooked, and he could tell you how to make them straight?

A. Never, except he made it a joke.

7. Q. Did you make your selvages crooked or straight in that loom?

A. At that time we used to weave native rubber, and could not make them crooked, with the exception of the revolution of steam.

8. Q. What width was the web made in that loom that you worked on—what was the widest that could be made on it?

A. We never made anything narrower than four inches, but could not have made four and a quarter inches on that machine.

9. Q. When was it that I built machines to make wider gorings, from four to five inch?

A. It must have been from November, 1856, to 1st February, 1857, when me and M'r Smith put up that machine to make five-inch goods. I did not only make native rubber; we just commenced at that time to use metallic rubber.

Cross-examined:

Cross 10. When did you first come to this country?

A. On the 22d June, 1852.

739 Cross 11. What did you do between June and October?

A. I used to work on silk ribbons out on 92d street.

Cross 12. What makes you think it was in October, 1852, that you went to work for M'r Smith?

A. I will not forget that day; I used to have a memorandum book from Germany. I was recommended to M'r Smith as a good workman, but could not speak any English, but I could read English. That was on Thursday, and M'r Smith put in my memorandum-book the very words: "I have not got all things quite ready. Come on Monday morning."

Cross 13. What kind of goods did you make for M'r Smith?

A. We made elastic web for Congress gaiters.

Cross 14. Had you ever seen any before.

A. Yes, sir.

Cross 15. How long before?

A. It might have been the same year.

Cross 16. Where was it?

A. I saw this very goods what we made on the vessel when we came to this country.

(Objected to both question and answer as immaterial.)

Cross 17. Did you not say that you saw the goods twenty years before?

(Objected to.)

A. No, sir; but I meant to say that the elastic webbing, which was narrower, was made twenty years before for garters and suspenders of web.

Cross 18 Describe the elastic shoe-goring which you made for M'r Smith, having reference to the position of the warp and weft threads and the rubber cords.

A. When I came to M'r Smith he had just got out a patent to manufacture the said web on a different and new plan altogether; that is, we worked with two shuttles at once, so that when eight shuttles went one way on the bottom eight shuttles went one way on the top.

740 Cross 19. Was that the only peculiarity of the loom?

(Objected to.)

A. Well, no; it wanted a great oversight to work on it; half or part of the material we could use cotton on one side and silk on the other, and manufacture a double quantity at the same time in that way.

Cross 20. Have you now stated all the peculiarity?

(Objected to.)

A. All we had at that time.

Cross 21. What was the position of the weft threads in the fabric?

A. What do you mean by position?

Cross 22. Were they interwoven with the rubber cords?

(Objected to; but the counsel does not understand the question himself, and doesn't put it so that any workman can understand it.)

A. We used to make out of cotton, worsted, and silk warps elastic web by weaving India-rubber threads in the middle of it.

Cross 23. Were the rubber cords covered by the warp threads, or any of them?

A. Not at that time.

Cross 24. When were they?

A. A year after Eabray left we tried to use one single rubber thread covered with silk on the outside.

Cross 25. Was the silk which you speak of a warp thread in the fabric?

(Objected to, as the witness has just answered what it was.)

A. As I said before, we made cotton, worsted, and silk goods, so that there must have been silk in the weft and on the web to make silk goods.

741 Cross 26. Question repeated and a direct answer requested.

A. It was not a warp; it was what we call a braid.

Cross 27. Did you ever make goods with a warp of cotton or other fibrous material covering the rubber?

(Objected to.)

A. Never as I know, except as an experiment.

Cross 28. What was the difference between the suspenders and garters you spoke of as having seen twenty years before and the fabric which you made for M'r Smith?

(Objected to.)

A. The difference was plainly that the garters or suspenders or braid were from an eighth of an inch to about two inches and a quarter, while M'r Smith's was about four inches or more.

Cross 29. Was there any other difference?

(Objected to.)

A. No.

Cross 30. You say, in your answer to the 19th cross-interrogatory, that M'r Smith had just got out a new patent to manufacture said web; how was it made before?

(Objected to.)

A. It was made before with one shuttle only, and such goods could have been made and was made on a hand loom with two shuttles, but it wasn't made with a power machine with two shuttles at work both at once.

Cross 31. Were you at M'r Smith's place before you went there to work in October, 1852?

A. Never.

Cross 32. Did you have any talk with him about his new loom before you went there in October?

A. I never saw M'r Smith before.

742 Cross 33. What did he say about his patent or his loom at that time?

(Objected to.)

A. What could M'r Smith say? He showed me the machine, and I saw how it worked, and M'r Smith knew I understood it and was a good workman, as I had been recommended to him, and understood all about it before I went with him.

Cross 34. Where had it been made on a hand loom with two shuttles before?

(Objected to.)

A. It was made all over; it was made in France, England, and Germany by hand machine.

Cross 35. Was it made with silk weft or filling, with cotton on one side and silk on the other?

A. Yes; it could have been made; it was made.

Cross 36. Was it a common thing to make it on a hand loom?

(Objected to.)

A. It was made from cotton, silk, mohair, worsted, and even linen.

Cross 37. Did you bring any sample with you from Europe?

(Objected to.)

A. No, sir; it was about that time just new, about a year or so; at that time it came all over the market, used for gaiters.

Cross 38. Did you see any pieces of it at M'r Smith's place that had been made in Europe on a hand loom?

(Objected to.)

A. Yes, sir; I saw them all over at that time, after that.

743 Cross 39. Were there such pieces of it there when you went to M'r Smith's in October?

(Objected to.)

A. I certainly saw the same class of goods that we were going to make as M'r Smith's new invention; I mean that they had been made on a hand machine.

Cross 40. Could you tell where those pieces of webbing came from?

(Objected to.)

A. I could not tell exactly at that time, as I could not speak English, but they were imported. I saw them in English and French goods, and

I think in German; after that time I saw them corner of Ann and William street, and in Warren street in two places.

Cross 41. Do you mean that you saw at M'r Smith's in October, in 1852, the same kind of goods that you afterwards learned were imported goods?

(Objected to.)

A. Yes, but I did not know who imported them at that time; it was not my business.

Cross 42. How many kinds of pieces did you see at M'r Smith's when you went there in October, which you afterwards learned were an imported kind?

(Objected to, also for a further reason that the witness has never stated that he saw pieces of imported webbing when he came to my place in 1852.)

A. I saw no pieces, but I saw what only a weaver wants to see, samples of goods like every weaver has, from an inch to four inches, what we call samples.

Cross 43. How many samples of shoe webbing did you there see?

(Objected to.)

744 A. I might have seen two; I might have seen three; one is all that is sufficient; it is all the same whether it is green, brown, or whatever color.

Cross 44. Did you bring any samples with you of shoe webbing to M'r Smith's?

(Objected to as immaterial, also that he has already answered the question.)

A. I stated before that the first time I saw that goods for that purpose was on the vessel on our captain's shoes.

Cross 45. For what other purposes were goods made in the same way used at that time?

(Objected to.)

A. They could not be used for any other purposes, at least they were not used for any other purposes; they were too wide.

Cross 46. For what purposes were narrower goods made in the same way used?

(Objected to as immaterial; also the witness has just stated that they were not used for any other purpose, used in the same way.)

A. Narrower goods were used since 1837, when my old father used to keep them and sold them; they were used for garters, suspenders, watch chains, fancy gloves for wristbands, and a thousand other little things.

Cross 47. Did you take a sample of such narrower goods to M'r Smith's with you?

(Objected to.)

A. No, sir.

Cross 48. What date in October did you go to M'r Smith's?

A. On the 11th October, 1852.

745 Direct resumed, by M'r Smith:

49. Q. You say, in answer to cross-interrogatory 13, that you saw the goods 20 years before. You say now that you are 41, and 20 years before '52 would only make you between 3 and 4 years of age. Do you mean to say that you saw similar goods 20 years before?

A. I saw them in 1837; that is as near as I can say positive.

50. Q. You say also, in your cross-examination, that you knew of them being made in Germany, France, and England, at that early date.

Please state the first time you was in France and the first time you was in England?

A. In 1837 my father imported goods from France and England direct, and I seen the goods, and sold elastic goods at that time; I was in England in 1859, and France also.

51. Q. You speak, in your cross-examination, about the first vulcanized rubber being used at my place. Do you mean that it was the first that you saw used at my place, or do you mean that it was the first vulcanized rubber you saw after you came to my place?

A. I stated before that when I first went to M'r Smith's we used nothing but native rubber, which at that time was, as far as my knowledge goes, used generally all over the world for web, and it must have been more than a year when M'r Smith first showed me the metallic rubber.

52. Q. Do you mean to say in your former answer that that was the first vulcanized rubber that you saw used at my place, or do you refer to vulcanized rubber used at my place before you came there?

A. If M'r Smith did use any before I came there I don't know it; I never saw it before.

53. Q. You say you saw some samples of elastic webbing when you came to my place; please state whose they were, and what kind, what color, and what material, and whether the samples were not in the loom, or made by me, before you came?

(Objected to as leading.)

746 A. When I first came to M'r Smith's the new loom was not ready yet; M'r Smith was just making it ready for me; M'r Smith had been working on a single loom before I saw him, and therefore he may have made some of them before I came there; but when I was at M'r Smith's I saw samples imported, which M'r Smith brought up and showed to me; it may have been a year, or a year and a half, and then found out that they made the same goods in Germany, but did not know it before.

54. Q. In speaking of those narrow goods used in Germany, have you not been speaking of narrow goods braided, figured, and all kinds of descriptions and make?

(Objected to as leading.)

A. Yes.

55. Q. You spoke about seeing those goods at corner of Ann and William streets and two places in Warren street; was that before you went to work at Paterson, or after you came back?

A. It was before I went to Paterson, I saw in many different places, for the reason that M'r Smith sent me to sell goods in 1858, and that was the first time I saw them in pieces, but had seen them in samples.

56. Q. When you see a sample of goods, how do you know it was made abroad, or how can you tell it was made in a hand loom?

A. Because you can make any goods on a hand loom, but M'r Smith's goods were made different; anybody can see what was made with a hand loom, whether with one shuttle or two.

57. Q. If you saw goods made with a single shuttle, with one weft thread, how could you tell whether it was made in a hand loom or in a power loom?

A. The goods were shown me as imported goods, and they were not made here, I know; but whether they were made on a hand loom is immaterial.

58. Q. Is that the only knowledge that they were imported goods by

I think in German; after that time I saw them corner of Ann and William street, and in Warren street in two places.

Cross 41. Do you mean that you saw at M'r Smith's in October, in 1852, the same kind of goods that you afterwards learned were imported goods?

(Objected to.)

A. Yes, but I did not know who imported them at that time; it was not my business.

Cross 42. How many kinds of pieces did you see at M'r Smith's when you went there in October, which you afterwards learned were an imported kind?

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Cross 44. Did you bring any samples with you of shoe webbing to M'r Smith's?

(Objected to as immaterial, also that he has already answered the question.)

A. I stated before that the first time I saw that goods for that purpose was on the vessel on our captain's shoes.

Cross 45. For what other purposes were goods made in the same way used at that time?

(Objected to.)

A. They could not be used for any other purposes, at least they were not used for any other purposes; they were too wide.

Cross 46. For what purposes were narrower goods made in the same way used?

(Objected to as immaterial; also the witness has just stated that they were not used for any other purpose, used in the same way.)

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Cross 47. Did you take a sample of such narrower goods to M'r Smith's with you?

(Objected to.)

A. No, sir.

Cross 48. What date in October did you go to M'r Smith's?

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(Objected to as leading.)

746 A. When I first came to M'r Smith's the new loom was not ready yet; M'r Smith was just making it ready for me; M'r Smith had been working on a single loom before I saw him, and therefore he may have made some of them before I came there; but when I was at M'r Smith's I saw samples imported, which M'r Smith brought up and showed to me; it may have been a year, or a year and a half, and then found out that they made the same goods in Germany, but did not know it before.

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A. The goods were shown me as imported goods, and they were not made here, I know; but whether they were made on a hand loom is immaterial.

58. Q. Is that the only knowledge that they were imported goods by

what other people told you, or what further knowledge have you of their being imported?

747 A. No other.

59. Q. While you were abroad, and before you came to this country and saw elastic goods made, did you ever see a wire used, or its equivalent, in the selvage of the goods?

A. No; not in such goods as M'r Smith made.

60. Q. What kind of goods did you see a wire made use of in?

A. Fancy goods, fringes, &c.

61. Q. In speaking of garters, suspenders, &c., was not the India rubber concealed from view by the interlocking of the warp threads with the weft threads?

(Objected to as leading.)

A. What does that mean?

62. Q. Hidden, so that you can't see it?

(Same objection.)

A. Yes.

Cross resumed, de bene:

Cross 63. How were they hidden so that you could not see them?

(Objected to.)

A. Any and all India-rubber goods woven and manufactured before was in the way that the rubber rose together with the warp, and M'r Smith had the rubber stand still.

Cross 64. Was that all the difference?

(Objected to.)

A. That was all the difference.

J. ADOLPH MARR.

Subscribed and sworn to before me this 1st April, 1870.

R. E. STILWELL,
Examiner, &c.

748 HENRY HILTON, being called as a witness on the part of the complainant, and being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Henry Hilton; age, 40 years and upwards; I reside at 250 Madison avenue, New York City; I am a practising lawyer.

2. Q. Please state if you recollect a trial between Dodd and Wakeman, defendants, and William Smith, complainant, tried before you in the common pleas, in New York, March, 1858.

A. I do, but not the date of the trial.

3. Q. Do you recollect any part of the opening and closing speech of that trial before the jury and before you, of Peter Y. Cutter for complainant, and M'r Brady for respondents?

A. I do not.

4. Q. Can you recollect any part of your address to the jury, or upon what subject it was?

A. I can't recollect any part of my address; I have not given thought to the matter before since the trial; I have an impression the subject was something about corrugated rubber, but am not certain.

5. Q. Can you not recollect that the defendants proved to your satisfaction that I had not made such goods as per contract?

(Objected to.)

A. My recollection on the subject is quite opaque—very indistinct; but my best recollection is that the impression I received upon the trial

was that the plaintiff did not establish his right to recover; this is the first time that I have ever expressed an opinion on the matter, I think.

6. Q. Please look at this paper, and see by looking it over if it will refresh your memory as to any part of the trial.

(Objected to.)

A. It tends to do so.

749 7. Q. Please state all of the particulars of the case as far as you can recollect.

(Objected to.)

A. As far as my memory serves me the case was this: Smith made a contract with Dodd and Wakeman, by which he engaged to produce an elastic rubber web for which he was to have a certain compensation; Dodd and Wakeman were to furnish the facilities at their factory; the proof, in my opinion, failed to establish satisfactorily that Smith did or could perform his agreement; Dodd and Wakeman refused to permit him to experiment further, and hence the suit; the jury, I thought from my first impression, rendered a verdict for the defendant; but still I am under the impression that they disagreed, and I think my last impression is right. There was one witness produced at the trial, a M'r Rogers, who, I think, was M'r Rogers of the firm of Kimball & Rogers, of Broadway, and I think he produced a piece of elastic web in an old shoe, and I think he claimed it was manufactured by M'r Smith; I think it was a doubt as to this testimony that led to the disagreement, as all the pieces of experimented web produced was so wholly inferior to this produced by Rogers, seemed, as I thought, difficult to believe that it was the same hand produced both. I recollect all the elastic fabric produced on that trial was entirely valueless, as I thought, except this old shoe with the elastic web gusset in it. I must state that my memory has been for the first time brought to bear upon this subject since I have sat here as a witness. I never knew any of the parties to the action, or ever had any intercourse with them, except during the trial.

8. Q. Did not the evidence of Dodd and Wakeman go to prove that the goods were valueless, and was it not at your suggestion to the counsel on each side that they should go and inspect the goods that were in the warehouse of Dodd and Wakeman, which both Dodd and Wakeman testified they were used to light their stove with?

A. I don't recollect.

750 9. Q. Do you recollect ruling, in your address to the jury, that I had had sufficient time to make the experiment?

(Objected to.)

A. I have some recollection to the effect that I ruled, as a question of law, under the contract, that Dodd and Wakeman were not bound to furnish M'r Smith with further facilities, that he had had sufficient time, and that they had afforded him sufficient time and opportunity to test his ability to perform his contract.

10. Q. Do you remember the subject of my patent being brought up during the trial?

A. I do not.

11. Q. Do you recollect the subject of forcible entry and detainer which took place in Newark, N. J., being gone into, and evidence in regard to it taken during said trial; and do you recollect a point of law being raised about that matter, and you deferred ruling on it till next day that you might consult some authorities on it in your library at home?

(Objected to.)

A. My recollection of the subject of the entry and detainer is so very indistinct that I could not express it in words; as to the rest I have no recollection.

12. Q. Have you any recollection of evidence being offered before you, before the entry and detainer took place in Newark, that Dodd and Wakeman offered to me a sum of money for my machinery, which I refused to take?

(Objected to.)

A. I have none.

13. Q. Have you any notes or memoranda concerning said trial that would refresh your memory?

A. Not to my knowledge.

751 14. Q. If you were to see the briefs of Cutter and Brady would that refresh your memory, think you, of what took place at the trial?

A. I don't know that it would; it might or might not.

15. Q. If such briefs were left at your office, would you be kind enough to look at them to see if they would refresh your memory?

A. I prefer making no promise about it.

16. Q. Is not the conviction on your own mind that then, in 1858, and now, that I utterly failed of making the goods under said contract with Dodd & Wakeman?

A. That was the impression I derived from the evidence at the trial; having neither thought or cared about the matter since, I have had no reason to change my opinion.

Cross-examined:

Cross 17. Was the subject matter of said contract and gusset web for shoe gore, and the question tried whether M'r Smith had produced such web according to the contract?

A. My recollection of the subject of the trial is that the elastic web which, by agreement, Smith was to produce would, if produced, be adapted to such gores as are put in what are called congress gaiters; my recollection is that the old shoe produced was a corrugated rubber web, covered with silk, and the testimony of the defendants went to show that it must have been a foreign manufacture and imported into this country.

(Question and answer objected to by complainant, as the contract can speak for itself.)

Redirect:

18. Q. Do you recollect the wording and substance of that contract that was tried before you?

752 A. I have stated my recollection of its substance; I have no recollection of its language.

HENRY HILTON.

JOHN C. GRAFF, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. John C. Graff; I am 46 years of age; I reside in the city of New York; I am a real estate agent.

2. Q. What was your business in 1849, and where did you carry on your business?

A. I was a manufacturer of brushes, and from the spring of 1849 to the spring of 1850, had a factory in 15th street, near Eighth avenue.

3. Q. Do you recollect in the summer of 1849, of me bringing some

machinery, consisting of looms, &c., to a factory in 15th street when you occupied one part of it?

A. Yes, sir.

4. Q. Please state what befel me there soon after I came to that factory?

A. An old hatchway upon which M'r Smith was walking gave way, and precipitated him to the floor below, injuring him quite seriously.

5. Q. Did I ever manufacture any goods in that factory after that accident to your knowledge?

A. No, sir.

6. Q. Do you recollect about what time of the year my machinery was moved from the factory, and where it went to?

A. I think in the fall, either the end of October or first of November, if my memory serves, but know not where it went.

7. Q. Did you notice the names on the carts that carried it away, and what places they came from?

753 A. I can't say, but as the question is now put, it was out of the city; it is a long time ago, and did not make any impression on my memory.

8. Q. After my accident, was it not some time before you saw me able to go about again?

A. Some months had elapsed before I saw you again.

JOHN C. GRAFF.

WILLIAM SMITH, the complainant, recalled.

Complainant states: I have been taking evidence on my own behalf in Philadelphia, and prior to going there a verbal agreement was made at M'r Gifford's office with M'r Deane that I should take evidence during this week in my own behalf; that he would attend as counsel for respondent in Philadelphia, and return with me to New York to attend to my taking evidence here during this week on the part of the respondents, at the same time notifying me verbally that he should take evidence on the part of his client on Monday next; but when I got through my evidence in Philadelphia, and had arisen to come away to New York, for the first time he notified me that he was going to put a witness on, on his own behalf, although that witness had been in attendance the day before, and the remaining part of the day on which I came away. I made objection to the taking of said testimony—that I had been detained a day longer in Philadelphia than expectation—having my witnesses subpenaed for New York the day I came away from Philadelphia, and not to have the case adjourned in New York till this morning, having but a few days to take my testimony in now, and shall have to take some part of it in the night, and I again protest against the admission of that evidence taken in Philadelphia on the part of the respondents, being without notice and contrary to our verbal agreement. I now ask counsel whether I shall go on and give my evidence in narrative form or put it in the shape of question and answer?

754 Counsel for the defendants requests the complainant to call upon his counsel, Charles F. Blake, esq., to state what the agreement was, made in his presence, regarding the taking of testimony in Philadelphia, to whose statement he will agree, and also requests him to have his counsel present at the taking of his own testimony, that all unpleasant controversies and putting statements of counsel or parties may be avoided.

Complainant replies that his counsel, M'r Blake, was not present at the time the agreement was made as to taking testimony in Philadelphia,

and knows nothing of any agreement with M'r Blake. Last Saturday complainant, as before specified, made an agreement with M'r Dean, and complainant insists on that agreement being carried out; that all the unpleasantness arises through counsel for defendant not keeping his agreement, and by endeavoring to proscrastinate and delay complainant getting in his own testimony; that complainant could have had his own testimony some three months ago if it had not been through delays made of which he had no control; that there would be no unpleasantness to put on the record any controversy if complainant was treated with due repect, and as one man ought strictly another. Complainant now repeats his former question whether he shall go on with his testimony by narrative or by question and answer.

Counsel for defendant prefers that complainant shall go on with his testimony by way of question and answer, as has been done throughout the taking of this testimony, so that he may have an opportunity of objecting to irrelevant questions.

1. Q. Please state all matters and things that transpired when you engaged Adolph Marr, in 1852 until 1857, the time he left you;
755 also all that transpired with M'r Eabry until the time you discharged him; also when he called upon you after he was discharged.

(Objected to.)

A. In 1852 I ordered made a new double-shuttle lathe of eight pieces and sixteen shuttles, that my former lathe, made by David Thorn, was very poorly made, I concluded to have a new one made. I ordered one of a M'r Purser, of Yorkville, near New York; during the time while he was making it, he sent Adolph Marr with a note to me, signifying that he was a good weaver, and was used to making silk goods; I wrote down for him to read, as he could not speak English, that when M'r Purser had finished the lathe and delivered it he might come; he did so come, after I told him to come in a few days and I should be ready for him; he came, and the only sample of goods that he ever saw in my place were goods made by myself; that him and me together put that new lathe to work, all the rest part of the machine had been previously made by David Thorn; that said Marr is mistook about the time of using metallic rubber after he came; that it was but two or three months after; that said Marr continued to work on the loom during the year 1853, 1854, 1855, when I removed down to Ann street, and until about May, 1856; that during all that time the goods could only be made in that loom, and that with difficulty, of 4 inches and $\frac{1}{8}$; but during the time I have no recollection of goods being made for sale of more than 4 inches, and they were always sold for 4 inches, and no samples of foreign web had ever been in my place, with my knowledge, during that period. I then removed my machinery to Paterson, N. J. I then made four new machines that would make as wide as 5 inches wide of shoe-goring; that in the fall of 1856 I started the first loom in making $4\frac{1}{2}$ inches wide, and early in 1857 I made 5 inches wide, and I had no call or demand for over 4 inches wide until the beginning of 1856; Adolph Marr, when the machinery was ready, came to Paterson to work for me, and he
756 left again in March, 1857; and then afterwards I heard from his own mouth that he visited England, France, and Germany to see what was making and doing in making elastic shoe-goring; he showed me samples of webbing, different sizes of strands of India rubber, different kinds of materials of which the webbing made abroad was composed, and said he knew the prices and the places where they could be bought; but he did not tell me or give me any further information on this sub-

ject, as he had been sent out by other parties to procure information, as he said they were trying to form a company to gobble up my patent, and he was to be the superintendent; I had reason to believe that what he stated to me was true, and his evidence regarding seeing imported goods in 1855 I was ignorant of, as he did not state the fact to me; I did not see him for a considerable time, perhaps some years after, 1857 or 1858—1858, I think. His testimony given to-day, where it has been conflicting, chiefly arises by counsel not conveying their meaning and ideas in the same channel that workmen have been accustomed to think in, and they speak as workmen and not as experts. After M'r Purser, in 1852, had made the eight shuttle double lathe, I made another contract with him to make me a twenty piece web double-shuttle lathe to put in the machine that was previously made by David Thorn of a forty-shuttle lathe single shuttle to put in the same machine. When he had made that lathe and delivered it I made garter web double-shuttle ¾ and 1 inch wide. In 1853 M'r Eabry came to me for employment; I believe I had seen him previously in Williamsburgh weaving silk fringes. He told me he came from Coventry, England, and had been used to making silk ribbons there; knowing from my own knowledge that a good ribbon weaver were the best kind of workmen as weavers, I employed him on the garter loom, showed him how to stop and start the power loom, as he had not been in the habit of working upon one; I had considerable trouble in teaching him to do it, as he would stop the loom when the shuttle
757 was in the middle of the passage through the web, breaking some of the warp threads, springing the webs so that they would not lie up to the reeds, having every piece in the loom to slack and fix one by one, and then tighten to its proper tightness, then put in the warp-threads that was broke out, causing at times, according to the damage done, two or three hours' delay, besides making a mark across the web that caused the web to look ugly and imperfect. This he did at times all the time he worked for me. I had great difficulty with him to learn him to handle the India rubber. He made such imperfect goods, and so little of it, that I discharged him. His evidence given offering to instruct me to make India-rubber goods, is a tissue of falsehoods all through; the man had had no experience in making them, and showed such inadaptability that at last my patience was worn out with him, and I discharged him. I did not see him again until the latter part of 1854, when he came to my place and showed me samples of webbing made similar to mine, which he said he had had made at one Luke Turner's, Leicester, England. He asked me if I would not employ him, as he thought he could make such goods now, and show me or tell me how they fixed the rubber warps in England. I told him I could not employ him, as I had but one loom making such goods, and I could not turn a hand away to take in a fresh one, and that I did not wish to do so. I do not know anything of him from that time to this of my own knowledge, only what I have heard from other people.

(Answer objected to as irresponsive, and otherwise incompetent.)

2. Q. Please state what time Charles McCoy Bagot came in your employment, what did he while there, and how long he remained with you, and what transpired while he was there.

(Objected to.)

A. He came in my employment in November, 1851, and was employed
758 on a 40 single-shuttle loom making narrow webs; when first he came I was starting the 8 double shuttle loom. I had great difficulty in the starting of it, as parts of it were made very imperfect—seemingly to have been done in a great hurry; kept continually

giving way; parts of it becoming loose, having to put in new bolts and screws; some parts being made entirely new. Charlie used to laugh at me; said I never could get it to work well without having it made over again. He saw old M'r Serrell come up and look at it to make a draft of it, to prepare for a patent, but the old man took sick and died soon after. Charles Bagot never said or hinted to me in any way or manner that he had ever seen or woven such goods before, or had ever seen a loom with a standing warp, although he knew that I was going to procure a patent for it, and it was a common talk in New York, among the traders, and even amongst some loom makers, that M'r Smith was going crazy; that I was trying to make both sides of a piece of cloth at one time. I think it was in January, 1852, I paid Charlie, on Saturday night, expecting him to come on Monday morning, and never made his appearance again to me. Charles Bagot said in his evidence that any weaver could make goods with a standing warp, that it was easy enough to do it; so it is, when a workman has seen it at work. I will merely state another thing which it is as easy to do as making goods with a standing warp, as no weaver, or expert, or patent counsel or patent lawyer can tell how it is done, that is: I'll take a single shuttle, working in a fixed plane, not moving upwards or downwards, and I'll take a standing cord, and I'll put weft in that shuttle, and I'll weave it all around the standing cord.

(Answer objected to as irresponsive, argumentative, hearsay, and otherwise incompetent.)

Adjourned to Saturday, April 2d, at 10 a. m.

759 SATURDAY, *April 2d*, 1870.

Present, counsel as before.

3. Q. Please state when you went to the factory of Dodd & Wakeman, in Newark, N. J., in 1849; state all what transpired while you was there; what you did at Dodd & Wakeman's, at Newark, N. J.; what business you went into, where you traveled to, and all that transpired in a business point of view after you left Dodd & Wakeman, at Newark, N. J., until the spring of 1851, when you said you made elastic woven shoe-goring in a house top of Cherry street, close to Franklin Square, said house being in part occupied by Firth & Pond, music publishers, and being the lessees of the whole building, having open communication through the lobby with their music publishing store, facing Franklin Square; state also how long you continued there; what place you removed to after you left there; how and where you contracted for and put up power looms, to weave shoe-goring, and other elastic goods, and all other matters and things which has a bearing in the above-entitled suits, or upon the testimony already given by different witnesses in the above suits.

(Objected to.)

A. After my accident in 1849, as above stated—or it might have been to same parties, about a month before my accident, as I called upon two or three parties to go in copartnership with me to make fine elastic suspender webbing, stating that I also intended to apply for a patent to make woven elastic shoe goring—I called upon several, as I have before stated in my testimony, and one of them, whose name I forget, gave me a note to take to Dodd & Wakeman, at Newark, N. J. I called upon them, but forget now whether I called upon M'r Wakeman in New York or went to Newark, N. J. I saw them and talked the matter over with them, saying I had looms and all opportunities for working them;

760 that I had skill and experience; mentioned also my intention of applying for a patent for weaving elastic shoe-goring. They said they had a loom in their factory making suspender-webbing, that they could get fine counts of cotton for making suspenders, and we could try the elastic goring at any time we thought proper. I showed them a sample of elastic goring, but do not believe, and am almost certain, that I did not leave it with them; of one thing I am certain about it, that I did not see it during all the time that I was at Newark, nor do I recollect seeing it after I left Newark. We entered into agreement under hand and seal, they finding for me a room with power, as the contract will show for itself. My machinery was removed from 15th s't, in New York, to a room in Dodd & Wakeman's factory, in Newark, N. J. After I had been in said room a few days, superintending and setting up of said machinery, I observed the irregularity of the power used in the room. I observed to them that it was the most irregular power that I ever saw, said power being used by divers other persons in the yard for grinding and sawing. I noticed that during the time of sawing logs, or whatever it was they were sawing, that during one part of it the power would move a saw very slowly, and when the saw got through the piece of wood, the pulleys that drove the saw would move from 200 to 300 per cent. faster than what it did while the saw was sawing the wood, and as the power in Dodd & Wakeman's factory was drove by the same power that did the grinding and the sawing, it had the same effect upon the power in Dodd & Wakeman's factory as what it had where they were grinding and sawing. I consulted with Dodd & Wakeman about the matter, and after telling them it was impossible to attempt to work with such power as was there, and it was folly to proceed any further with it, they asked me if there was any remedy. I said there was only one, and that would be doubtful whether it would be a perfect remedy, but I thought it would be only a partial one; if I recollect right, to the best of my memory they said they thought the power was worse than usual, but it was not a very regular power.

761 I told them that the remedy was to put up a pair of cone pulleys, with governor balls to move the strap on the cone pulleys, that when the engine went slow that it would move the strap to a part of said cone pulleys, that would drive the main shaft that drives the looms at a greater speed and vice versa; they told me to have such pulleys, &c., made. I sent to a person of the name of Smith, do not think now of his Christian name, who was in partnership with one Pecare, in Centre street, N. Y.; he came up to Newark and took the dimensions of the space where the said cone pulleys were to be put, returned to New York, made the same, returned to Newark with them, and put them up in said room in Dodd & Wakeman's factory, I believe in December, 1849. After said pulleys were put up, and a loom was ready to put in operation, the irregularity of the steam power was not improved from the time I first went there, that the movement of the strap of the cone pulleys was so constant through the irregular power that the strap was very apt to slip and stop the machinery, and it continued that way all the time that I was with them. Some one, during the time I was there, used to put black lead on the journals of the governing balls and the cone pulleys, which would cake and grow hard, and when so discovered the machinery had to be stopped, the cone pulleys took out of the frame, and said black lead used to have to be cut off and scraped away in the best manner possible. When I put the first work in operation for suspenders, I found they had no fine material of double and twisted cotton such as I required. I put to work the sus-

penders, with such counts of cotton as they were then using on a loom of their own in the same room where my machinery was. I told them that, perhaps, I could get some finer counts made in Paterson, N. J. They told me I might go and see what I could get there. I did go to Paterson, and from an inquiry from one factory to another, I found a small manufactory that spun 30 single yarn. I called upon him, his name I forget, and in our conversation he said he had no doubling frames to double the cotton, but he could send me to a man farther down the race who could double it. I made agreement with him
762 for some cotton, what amount I can't recollect now; called upon the manufacturer that he recommended, and he said he would double it if the other manufacturer would send it down to his mill; his name I also forget, but I have done business with the said man who doubled it; some little business I have done with him so late as 1857. Whether there was two separate charges for the cotton, one for doubling and one for the cotton, or the cotton was sent to Newark under one charge, I cannot say. Part of the said cotton was used in Newark, N. J., dyed black, and some of it drab, but no worsted material, or what is called mohair, was used while I was there at Newark, to my best belief and recollection; that when cotton goods were attempted to be made into shoe goring, warp and weft were of all cotton; that when silk goring was attempted to be made, warp and weft were all silk; that the counts of the reeds in which the suspender web and the other web were made were 16 dents to the inch—and witness would here remark about two exhibits put in evidence, Nos. 2 and 3, marked Wakeman, J. G., j'r, examiner—that No. 2 is silk weft and cotton warped, the cotton warp being twice as fine, as according to Wakeman's evidence, were used in making said goods, while at their factory, he testifying that it was No. 40 that was used there; that being to witness' own knowledge ten counts finer than any that was used whilst I was there. The count of such reed No. 2 was made in was 20 dents to the inch, besides the India rubber being about twice as fine as any that was used whilst I was connected with them. With regard to Exhibit No. 3, marked Wakeman, J. G., j'r, examiner, it was so much decayed and faded that I can't speak very particular about it, but there is one fact connected with said exhibit as aforesaid which speaks for itself: John P. Wakeman, in his testimony, said the counts of cotton used there, while I was with them, was forty's twofold doubled and twisted, whilst the weft in said exhibit No. 3 is composed of 3 strands, single cotton, not doubled and
763 twisted, and the finest counts of cotton that was used in their factory whilst I was with them was No. thirty's twofold double and twisted.

In fitting up the suspender loom to make elastic suspenders, I fitted it up to make exactly the same kind of suspender as what they were already making on a loom of their own in the same room; this is the way and manner as I made the suspender as follows: I put up four heddle shafts to make a round edge on each selvage of the suspender; I put up two heddle shafts to make the under part of the suspender plain cloth, then I put up one heddle shaft to pass the India rubber through; then I put up two more heddle shafts to make plain cloth on the surface of the suspender; then I put up two heddle shafts to pass the binding warp through to bind the upper and lower cloth together, making four heddle shafts for the round edges; four heddle shafts for the upper and lower surface of the web; one heddle shaft for the India rubber to pass through; two heddle shafts for the binders to pass through; making altogether 11 heddle shafts to make the web; that being two heddle

shafts more in the loom that I put up than what was in their loom that was making suspenders in another part of the room, the goods being made exactly the same, and the reason I used more heddle shafts was that my loom in which I made the suspenders had such conveniences and appurtenances already constructed, on which I had made goods previously, before my connexion with Dodd & Wakeman. The suspenders I made, and the suspenders Dodd & Wakeman made while I was there, were made with round edges, double cloth on upper and lower surface, with binding warp between the cords of India rubber, causing the India rubber to lie in a tube or sheath. I continued with Dodd & Wakeman until about June or July, with divers misunderstandings with them, which I have described in my cross-examination in the suit that I have against the Glendale Elastic Fabrics Company, in the district of Massachusetts. When I left Newark, N. J., I believe in August, 1850,
after the trial held there against them for forcible entry and de-
764 tainer, I came down to New York, being destitute and without any means of support. After considering what was best for me to do a few days, a friend of mine purchased $100 worth of teas, made up in small packages, to see if I could make a support by selling them; I tried that in New Jersey, about Newark—in the outskirts of Newark; the result was that I could not make profits sufficient for the time expended on them. I next turned my attention to hardware, such as pocket cutlery, sets of table knives and forks, and so forth. I attended an auction place in Platt street, New York, where I bought in goods about once a week, and cheap job lots of a man named Tyson, who had a room in the upper part of a building in Cedar street, right-hand side of Cedar street, a few doors off Pearl. I hawked such lots about New York and Newark, and found by experience that I could make a fair profit by the sale of them, but the goods were so heavy and so cumbersome that I had to give the business up; if I had had sufficient means at the time to buy a horse and cart to carry the goods in, probably I could have succeeded very well in the business. Late in the fall, November, 1850, I turned my attention to buying a light kind of goods, such as beaded purses with steel rings, which were much in vogue at that time, cheap jewelry, pocket-books with steel frames, and divers other small matters, such as shawl pins, watch chains, and so forth. In December, of the same year, 1850, I started to go up in a North River boat to Albany; the boat could get no farther than Hudson, on the North River, with the ice; if I recollect right, she could not get out again for the ice; I believe it was Wednesday. I found after, by making inquiries in Hudson, there was no conveyance from Hudson to Poughkeepsie, where I wanted to go, until Saturday night at 12 o'clock, and that would be a mail cart passing through from Albany to Poughkeepsie. I hawked Hudson with my goods, passed over on the ice to a little place on the other side of the river called Athens. I waited until
Saturday night at 12 o'clock, and rode to Poughkeepsie. I thought
765 of proceeding by the railroad from Poughkeepsie to New York, as the cars at that time were running as far as Poughkeepsie.

On the Monday, at Poughkeepsie, after breakfast, at the hotel, I was inquiring when the trains went for New York; they said the Croton Bridge was broke down, and the trains could not get up to Poughkeepsie, but there was a barge that was going down to New York with provisions to the New York market; I went down to the barge and took my passage to New York, and had to wait on the barge two or three days before the steamer which had to come from Newburgh to take the barge away as she could not get up for the ice; I recollect one circum-

stance on the boat, on the last day, before we came away, that is, Henry Ward Beecher; I turned my head to look at him; I saw a young thinnish-looking man sitting at a round table in the cabin, writing; I went to hear Henry Ward Beecher preach in Brooklyn, for the first time, about three years ago, but could not recognize him as the man I saw writing in the cabin of the barge, as he appeared much stouter, and not so dark complexioned; the barge arrived in New York, if I recollect right, the day before or a few days before Christmas Day; after arriving at home, after such an unpleasant journey, I consulted with myself and my wife, to turn my attention to something else, to where I should not have to travel; I saw an advertisement in the paper of a washing-fluid establishment to be sold out, at a place top of Cherry street, close to Franklin Square; they came up to my place, where I was living; we conferred together about the matter, and I went down to their place of business, and in course of about a week's time I bought them out. That would be in the beginning part of January, 1851; to save expense to myself, the room was partitioned in, I think, three different parts; one was a kind of office, the other a place for making washing-fluid and bottling it; the third part, being the largest part, me and my wife lived in; I found, after the first week I had been there, that the sale of the washing fluid all dropped away, excepting one customer, and found
766 that I was what is called "regular sold"; one of the men's names that I recollect buying the washing establishment of was Tousley; I consulted with Firth and Pond about the matter and he said, if I recollect his words correctly, that he did not think Tousley would do such a thing, as he was a member of a church; after I had bought him out, I understood he went to be a clerk in a book store in the Bowery, left-hand side going up from Chatham street; I asked Firth & Pond if they could give me employment in tuning pianos, as they manufactured pianos, or arranging parts to music, as they were music publishers; they said they could not do so, that they did not arrange music, and the tuning of the pianos they sent for a man to tune them whenever he was wanted; I advertised what things there was for sale, as there were many things that belonged to the making of fluid which I had bought of them. I think about March, in the spring of 1851, while in Cherry street, my wife and I concluded that she would apply to some establishment for making straw bonnets, as she was a milliner by trade, and that I should get a little hand-loom and make shoe goring, and try to sell it; she did apply at an establishment down in Broadway, below Wall street, on the same side, to a man by the name of Reynolds, who gave her blocks as a form, and plaited straw to make into bonnets; the same man a few years ago had his establishment in another branch in Canal street, and I think he is now in Broadway, above Canal street, but I am not certain; I went up to a man named David Thorn, that had made a great deal of machinery for me previously while I was in New York, and he gave me a little hand loom and an old shuttle; I had it sent to Cherry street, and put it up in the place I dwelt in, and there I commenced making woven elastic shoe gores, and then made the first sale of the article I ever made, or I had known to be made; in about two months or so I made a contract with David Thorn aforesaid to make me two power-looms for making elastic goods, for $400; that was only for making the mechanical part of them, and did not include reeds, hed-
767 dles, beams, spools, wheels, warping mills, shafting, pulleys, and belts; he was to have the looms made in six weeks from the time of our agreement, which would have been, I believe, to have been delivered some time in June the same year; but the first loom he delivered

to me was, I think, in October, 1851, and the second loom some time in November, 1851, and the transactions after that date transpired according to my former testimony.

Witness wishes now to add to his testimony one circumstance which he omitted to put in while giving his testimony. That in the year 1850, after he left Newark, one M'r Booth, of Bedford street, New York, told him there was a man named Sebastian Oberar, of Yorkville, near New York, who could manufacture any kind of goods in weaving if witness would find the materials. Witness went to Yorkville to see him, and agreed with him that witness would find him silk if he would make witness some hat bands. Witness bought a quantity of organzine silk from John Ryle, of Paterson, N. J., and left it with M'r Booth, in Bedford street, M'r Booth finding the cotton for the weft for said hat-bands; it being part of M'r Booth's business to provide materials in cotton such as witness wanted. M'r Booth gave the silk and the cotton to M'r Oberar to make the hat-bands. Oberar made a beginning to make the hat-bands, and wove some little of them, and then neglected and refused to go on with them. The result was that the work had to be cut out of the loom in an unfinished state, the warps being almost an entire loss and the goods that he had made being only remnants.

Adjourned to Monday, April 4, 1870, at 10 a. m.

MONDAY, *April 4th*, 1870.

Present, counsel as before.

Witness continues:

768 Wishes to add an explanation to a word used, as "hawking"; witness meant when he used that word to supply dealers with goods to sell again. Witness recollects that he bought of some goods mentioned, as purses, shawl-pins, watch-chains, jewelry, were bought of William H. Lyon, who now keeps his store in Broadway, near Walker street, New York; in the fall of 1850 he had his store in either Liberty or Cedar street, between William and Pearl streets, where witness bought said goods of him in the fall of 1850. Witness sold some of said goods bought of W. H. Lyon to James Walker, who kept a variety store in Hudson street, above Canal street; said Walker now keeps a shoe store in Fulton street, above Sands street, on the right-hand side, in Brooklyn. Witness gives this statement of the matter that the defendants may examine, if they wish, the truth of them.

4. Q. Please state all that transpired with Nathan Nichols, Joseph Dix, M'r Snell, and M'r Towers of the firm of Howe, Brothers & Co., of Boston, Mass., as far as relates to the evidence given in the above-entitled suits.

A. I was negotiating with Nathan Nichols for the sale of my patent in 1862, with the full understanding on all sides that my patent covered the fabric, and when in Boston in 1867 I had several conversations with him on the same matter, and the understanding was the same as in 1862. He got me to meet him in a private room in Lynn, in secret, asking me to give him 5 per cent. advantage over every one else, saying he could work the rest of the manufacturers in and get them to take out licenses; and the question of my right to the fabric was not doubted until I had an interview with William Whiting along with Henry L. Doggett, when I exhibited my reissued patent of June the 18th, 1867; also showed them the patents that had been brought against my reissue and patent in the Patent Office. The evidence of M'r Snell given in Boston at different times, as far as relates to any conversations with me about my patent, is destitute of any truth, as I never held any conver-

sations with him on the matter. I might have had conversations with M'r Joseph Dix, whose clerk said Snell was, in his hearing, but
769 never with him; neither did I, at any time, state to M'r Dix that my patent was confined to Union web, but that it covered all kinds of web for shoe-goring then in use in the market. With regard to the circular which he produced and put on file, as sent to M'r Dix, the said circular is not in the state that I issued it to any one; I will produce a registered circular sent to Joseph S. Lovering and to Henry L. Daggett, a circular, a copy of one drawn up by my legal advisers, which paper I followed in copying out my circulars, and why counsel should produce M'r Snell as a witness about the circular when M'r Joseph Dix, to whom the said circular was said to be sent, was equally available, I leave it for counsel to explain.

In respect to the evidence given by M'r Towers in the above suits, I never had any conversation with him about my patent, nor with any other person in his hearing. I have sometimes called at their firm to buy cases of ducks and drills used in the shoe trade, and M'r Towers has called upon me when in New York for orders for such goods, but that was prior to the extension of my patent; and I feel myself astonished at men when looking me straight in the face will swear to the most deliberate falsehoods of transactions which never took place.

5. Q. Please state what took place between you and Henry L Daggett, a few weeks prior to the commencement of these suits.

A. I was in conversation with him at his store in Boston concerning my patent. He said he would consult with William Whiting, and if he said my patent was good he would come in at once, but said he should want a crumb of it. I saw him afterwards on the same day or early the next day. He said M'r Whithing was down in the country, and he would write for him to come up to Boston. He said it would cost him $250 for Whiting's opinion. I requested him to wait a little while, telling him it would save his money, as I already had his opinion, or was about to get it, but unknown to M'r Daggett. I made my arrangements while in Boston with other parties, without further consulting M'r
770 Daggett. In conversation afterwards with M'r Daggett he said he considered himself left out in the cold. I replied that it was against my wish that he was left out of the arrangement; that I had been overruled in the matter.

6. Q. Please state what transpired between you and Ferdinand Doebley, in Philadelphia, in 1869.

A. In 1869 I was hunting through the stores in Philadelphia endeavoring to procure a sample of an old suspender formerly known as forty-eights in the market. During my investigation I was requested to call upon M'r William H. Horstman, corner of Fourth and Cherry streets, for information regarding it. He recommended me to call upon Ferdinond Doebley. I did so call upon him. He said he recollected the forty-eights very well, describing them as cockley in appearance, and very slazy; that you could see through them when you were weaving them. He said he thought he had some old samples at his house, and he would bring them down. I asked him how the India rubber was covered with the warp-threads interlocking with the weft-threads. He said they were wove in a sack—that was the expression. I saw him the day after. He brought a lot of samples down of suspender webs, but could not find any samples of the forty-eights. He said the samples brought down were made after 1850, after they began to make them smooth. In one of the samples of suspenders, with a green stripe in it, he showed me how the India rubber was covered in the forty-eights. He said the

reeds used to be spaced; every third dent in the reed was wider than the rest for the India rubber to lie in. I asked him if he could make a sample similar to the forty-eights, and make some reeds that the forty-eights were wove in, and suspenders generally at that time. He said he could if he could get some native India-rubber thread, and materials to make it with. I said I would supply him with them. He said of course he would want pay for his time and his trouble. I replied that I expected to pay him. I asked him what might be the expense. He said he could not say. I replied that I had spent a good deal of money in trying to find an original sample of the forty-eights sus-
771 penders. I said sooner than be without a representation of it, as I could procure no original of the forty-eights, that I would go to the extent of $50 expense. He said he would want something for making the reeds. I gave him $5 for that purpose. He sent them down to New York. I found the reeds were not made as he said they were to be made; they were spaced every other dent instead of every third dent. I sent him some India-rubber thread, and ordered him to call at M'r Horstman's for some cotton thread, which he did. He wrote me back that he could find no hand-loom to make it in.

I went up to Philadelphia shortly after that letter. I procured a hand-loom in Market street, Philadelphia, made a warp, and put it in a loom. I called on M'r Doebley and took him to the place. I left him there, and he said he would procure a weaver to make the sample. I had a letter from him some time after, stating that the materials were not right for making the sample. I answered him, if I recollect right, for him to get what materials were proper, and for him to make a sample. I did not hear anything from him. When I went to Philadelphia again I went to where he kept his office, in Chestnut street, and he said he would call on me at my place where I was stopping if I would appoint a time. I did so appoint a time. He came, and brought another gentleman with him, whose name I don't know; he was a stranger to me. They begun to talk what a great case mine was, and M'r Doebley could give very important and valuable testimony for me. From their conversation and manner I thought they appeared to me that they wanted a consideration for what they had to say. I told them that I wanted nothing but the truth about the matter. If he could make me a sample of the original forty-eights, which he had said he could, I would pay him for his trouble in doing so; did not expect him to do it for nothing. Doebley said that he had made elastic shoe-goring, the same as my patent, in 1844, and sold it to John Thornley, who now keeps an India-rubber store, 503 Chestnut street, Philadelphia. I told him he must go and prove it; if he could do so that would be the end of
772 the matter; that I was quite a wrong person for a man to come to to tell me how much he could injure me; that I wanted nothing to do with my patent in any way or shape if it was not a genuine, good patent. This transpired in my bed-room. I got up and came out, after which they came down stairs and went out of the house. After that I did not see M'r Doebley, or hear anything about him, until I saw him in the beginning part of January, 1870, giving evidence for the defendants at M'r Gifford's office, in New York.

Adjourned to Tuesday, April 5, 1870, at 10 a. m.

TUESDAY, *April* 5, 1870.

Present, counsel on both sides.

Adjourned to Wednesday, April 6, 1870.

WEDNESDAY, *April* 6, 1870.

Present, complainant and counsel for the defendants.

Counsel for the defendants renews his objection to proceeding with the testimony of the complainant because he has already given his testimony in these suits, and the complainant is unduly encumbering the record by immaterial testimony, and unnecessarily repeating testimony already given.

Complainant replies to the objection of counsel, that the record will speak for itself; that for thirty days or more which he has appeared before the present counsel he has took every opportunity to hinder complainant from getting in his testimony. After exhausting witness in cross-examination, could not continue because he had no more to ask. The record was left open ten days after he recalled me for cross-examination, and he takes every measure, legal and some otherwise, to
773 hinder complainant from getting in his testimony in time stipulated and agreed upon.

Counsel for the defendants says the above statement of complainant is unjust; that when he came to New York to attend the completion of the testimony, the complainant, in the office of Mess'rs Keller and Blake, complainant's counsel, and in the presence of M'r Blake, stated that he wished further time in the cases pending in Massachusetts wherein to take testimony equal to the time M'r Gifford had agreed to in the New York cases, or he should have to apply to the court for further time, saying that he desired to take testimony in Philadelphia and in New York. Counsel for defendants said he would accommodate the complainant if he would agree that the counsel for defendants should take testimony in Philadelphia, if he desired; complainant agreed to this, and it was agreed that testimony should be taken without formal notice by either party, but the time of extension could not be determined without seeing a certain agreement at M'r Gifford's office, the parties not being agreed as to the contents of said agreement. Afterwards at M'r Gifford's office, it was agreed to commence taking testimony in Philadelphia on Wednesday, instead of Thursday or Friday, as talked of in Mess'rs Keller and Blake's office. In Philadelphia, however, after close of complainant's testimony, and when the defendants' counsel called a witness, the complainant objected to defendants' counsel taking testimony, and left the room.

As to what took place in the office of Mess'rs Keller and Blake, between complainant and defendants' counsel, the defendants' counsel will be bound by any statement thereof made by M'r Blake.

Complainant replies to the statement which counsel has just
774 made about defendant taking evidence in Philadelphia, is wholly devoid of truth and pure fiction; that such a statement was never made in the presence of M'r Blake, neither did M'r Blake agree in any way or manner about the defendant taking testimony in Philadelphia, nor was that subject ever mentioned in his presence at the time spoken of. One or two hours afterwards, the day I believe being Saturday, after seeing what the stipulation was regarding the time with M'r Gifford for taking testimony, M'r Dean consented to the extension of time in Massachusetts, in the suits there to be extended to the same time as those in New York; we then agreed upon a time we should go to Philadelphia, that he would go with me then, and come back with me to take my testimony in New York, and he impressed upon most distinctly, all this taking place before the examiner; that he notified me that the defendants would take testimony on next Monday week, and the first information I had of defendants taking testimony in Philadelphia was

after I completed the evidence of taking my witnesses in Philadelphia, and had arose from my chair to come away to New York, my witnesses being subp'naed to attend at his office on the day I came away from Philadelphia, my case being adjourned from that day to the next morning here.

Defendants' counsel asked the complainant if he is willing that M'r Blake may state his recollection of the agreement and conversation in his office, between complainant and defendants' counsel, and that said statement be handed to the examiners to be put in the record.

Complainant replies that he has nothing to do with what transpired before M'r Blake; counsel, if he thinks proper, can call him as his witness, but the agreement about taking testimony was made after the conversation with M'r Blake and before the examiner in M'r Gifford's office.

775 Complainant offers in evidence Exhibit 400, marked R. E. S., Examiner, one reed and four pieces of suspender web attached to the reed, marked 1, 2, 3, 4, as samples given to complainant by Ferdinand Doebley, of Philadelphia, said Doebley stating to complainant that the——

(Objected to by counsel for the defendants, who requires that all testimony be taken by interrogatory and answer, and that the testimony now sought to be introduced should be called for by interrogatory.)

7. Q. Did Ferdinand Doebley furnish you with any samples of reed or suspenders? If yea, please state what they were and what conversation passed between you concerning said samples.

A. He did furnish me with samples of reed and suspender webbing, which I offer in evidence as complainant's exhibit (No. 400, R. E. S., Examiner), the pieces of suspender web being marked consecutively 1, 2, 3, 4; the conversation respecting them was that the reed for the suspender web used to be spaced at every third dent of the reed; that his man that had made them had spaced them by mistake in every second dent of the reed; he said at the same time that the old 48 suspenders were wove in a sack similar to the red and green stripe in No. 1 sample; that they were wove so slazy that you could see through them while they were being woven; that when elasticated they would crinkle up. He further said that they always misstated the samples in making what came from the East into the Philadelphia market for sale; No. 4, he said, was the first sample he ever made smooth in that style of suspender webbing; all the others being corrugated, or known in the market as corded suspender web, or dice web. I asked him when he first saw No. 4 in the market; he said 1850, 1851, or 1852, or in that way; he said the smooth style of making those kind of webs began to come into use more and more, and run the old 48 out of the market.

776 Complainant now offers in evidence which he has already given testimony, saying he would put them in evidence, defendants not objecting, in rebuttal of M'r Snell's testimony, offered in the case of Smith vs. Elastic Fabrics Co. and Nathan Nichols, a registered letter, as follows:

"No. 4972, Post Office, N. Y., March 7, 1862. Rec'd a letter, M'r Lovering, Boston, Mass., four p. m.

"E. Ritter, No. 4973, registered letter, March 7, 1862. Rec'd a letter addressed to H. L. Daggett, Boston, Mass., four p. m.

E. RITTER.

NEW YORK, *May* 27, 1861.

To the Goodyear Elastic Fabrics Co.:

Your company is hereby notified that said company is forbidden, and all the officers and members thereof are forbidden, from using or in any manner applying or interfering with any of the rights or benefits secured to me by reason of letters patent granted to me by the Government of the United States for an improvement in manufacturing elastic fabrics, patented April 5, 1853.

And the said company is, and its members are also, hereby notified that no valid assignment or transfer of all or any of my rights, title, or interest in or to said patent has ever been made by me, and that I am now and ever have been from the date of its issue the sole and only owner of said patent and the rights thereby granted.

(Exhibit 401, R. E. S., Examiner.)

Complainant also puts in evidence a patent of Julius Hotchkiss, No. 1520, and dated 22d December, 1846, dated 15th May, 1847, marked Exhibit Julius Hotchkiss, No. 402, R. E. S., Examiner.

Complainant also puts in evidence a letter of Julius Hotchkiss to M'r Elliot, dated Waterbury, August 17, 1847, post-marked Waterbury, August 18, 1847, and marked Exhibit Julius Hotchkiss, No. 403, R. E. S., Examiner, &c.

Complainant also offers in evidence a copy of a rejected pat-
777 ent of Julius Hotchkiss, applied for in or about September, 1847, correspondence continuing from the Patent Office and Julius Hotchkiss until May, 1848, marked Complainant's Exhibit, Julius Hotchkiss, No. 404, R. E. S., Examiner, &c.

8. Q. Please state what transpired between you and M'r Warren and E. H. Sawyer concerning elastic suspender-webbing, in the years 1855 and 1856?

(Objected to.)

A. They called up at my factory, in 37th street, between 8th and 9th avenue, in the summer of 1855. If I recollect correctly, M'r Warren said that William H. Lyons told him where my place of business was. I took them in the room where my looms were working. They might have stayed upwards of an hour with me. They asking me if I would get up a suspender-loom on my patent principle, they would buy it of me. They asked me if I could get up a loom to make a figured suspender and weave the button-hole in the end. I replied I thought I could do it, but it would be very troublesome to make the first loom of that description. They said they would pay well, or something to that effect. All the conversation I can't remember now. Some time after that conversation, I thought I would turn my attention to it. If they did not buy it, I thought such a loom would be valuable. I proceeded to build such a loom, from time to time, as I had leisure to pay attention to it. The next time that I saw M'r Warren at my place he came alone. I recollect him asking me at what time I went to my dinner. I said at 12 o'clock.

9. Q. What took place between M'r Warren and M'r Smith alone——

(Objected to as irresponsive, as well as hearsay.)

——when the engine stopped?

A. I think I only saw them once more at my place in 1855, but my workman on more than one occasion told me that those gentle-
men——

778 (Objected to as hearsay.)

——(meaning Warren and Sawyer) had called at the weaving-place and inquired for me while I had been away to dinner. In the fall of

1855 I removed my weaving factory to a room in Ann street, New York, between Nassau and William. I saw both of them again early in 1856, in Ann street. The suspender loom that I had constructed to weave graduated suspenders they saw. I heard of them calling in my room during the dinner hour, the same as I had heard in 37th street. The last time I ever saw them in Ann street, they came together. I was then making ladies' belt ribbons in said looms, there being an excessive demand for them. E. H. Sawyer said that they had bought a patent that day, in Morrisania, or somewhere in that direction in West Chester County, I think he said, for weaving the button-holes in the suspender ends. Years afterwards I learned that they had bought said patent for weaving button-holes of one William V. Gee, who is now the superintendent of Morris Raleigh's weaving factory, in Philadelphia. Some little time after this transpired in Ann street, I was coming in the cars from Philadelphia. E. H. Sawyer came to where I was sitting in the cars, and began talking to me about my patent. I told him that he and M'r Warren only came sneaking about my place for what they could discover; that I believe they had no intention to buy a suspender loom constructed according to my patent, either with or without button-holes being woven in them. He got up and walked away from me, and did not see him again for many years, and I don't recollect now ever seeing M'r Warren again after my last interview with him in Ann street. In some part of 1855 they began to introduce suspenders into the market, made according to my patent.

Counsel for the respondents, not waiving any objections to the admissability or competency of complainant's testimony de bene esse, interrogates as follows:

779 Cross-examined:

Cross 9. Have you produced, annexed to Exhibit 400, R. E. S., samples of all the webbing received by you from Ferdinand Doebly?

A. I believe, as far as the suspender-webbing is concerned, I have. He give me a sample of shoe-web which he said he made in 1844, which sample was so ridiculous made and so rough and bad in appearance I did not think it any consequence to attach it, as said Doebly had put samples of shoe-webbing in for the defendants which he said he had made and sold in Philadelphia about 1844. I dare say I could find the webbing somewhere about my office, when I can get time to look for it, and will produce it if I find it and attach it to my cross-examination if requested to do so.

Cross 10. Will you please produce it for that purpose at the next adjournment?

A. I don't think I will have time to look for it, being so engaged in other matters, but if I do find it I will put it on record, no objections are made, even after the evidence is closed.

Cross 11. It is desired for the purpose of questioning you with reference thereto. Will you search for it and produce it at the next adjournment?

A. I will search for it, and if I find it produce it.

Cross 12. Don't you know exactly where it is so that you can put your hand on it?

A. I do not. I have already looked temporarily for it, but not particularly. If I had found it I should have attached it to the exhibit. Counsel for defendant has got in his possession a similar fabric from Doebly. If he will produce them, I will swear to that one which is sim-

ilar to what I got. If it is any convenience for counsel, he can assume it was any kind of a fabric he thinks proper, and I will answer it.

Cross 13. Is said piece of fabric similar in make and structure to those produced by M'r Doebly in his testimony?

780 A. They are exactly similar to one or two of them. The others appeared to be a little better made.

Cross 14. Is said sample made according to your claim in your reissued patent, Division B?

A. I decline to say or put any construction on my patent, Division B, where the point is at issue in the court.

Cross 15. Why so?

A. One reason is that the counsel has already hammered at me about four days, and I have answered in every variety of form that I can think upon, and if counsel will allow me to be my own judge in the matter and abide by my decision, I will give him my opinion and pronounce judgment in the matter.

Cross 16. Is said sample made according to your claim in your reissued patent, Division B?

A. I decline giving an opinion forestalling the decision of the court on my claim in Division B—whether it is made or is not made according to my claim in Division B.

Cross 17. Is said sample made and put together like the first sample or piece of elastic webbing for shoe gores you ever made?

A. I did not see it made nor put together.

Cross 18. Is said sample held together in the same way and manner in which the first sample of elastic shoe goring you ever made was held together?

A. I don't believe they are.

Cross 19. Describe the difference between them in that respect.

A. I have not seen the samples that I first made for more than twenty years; am not prepared to describe the difference at this distance of time.

Cross 20. Cannot you do so?

A. Not with certainty.

Cross 21. With regard to what feature are you in doubt?

A. The general features of it, so far as my recollection goes.

Cross 22. What do you mean by the general features?

781 A. Its general appearance.

Cross 23. Is that all?

A. That is all; its whole general appearance.

Cross 24. Is there any difference between said sample and the first piece of elastic shoe-goring you ever made as to the way and manner in which they were held together?

A. The whole appearance appeared to be entirely different in quality or in elasticity; as much difference as there is between a canvas bag and a fine silk dress.

Cross 25. Are those all the differences?

A. I can't say, not having seen that sample for twenty years, and never saw the other but once, that it seems ridiculous to me how any man could imagine or call it an article of elastic shoe-goring.

Cross 26. In what respect is it ridiculous?

A. In every respect.

Cross 27. Mention in detail every respect in which it is ridiculous.

A. I will class it all in one by saying in every respect you can imagine it to be.

Cross 28. Mention one single respect.

A. It looked ugly.
Cross 29. Mention another.
A. It looked mean.
Cross 30. Mention another.
A. It looked common.
Cross 31. Mention another.
A. It looked foolish.
Cross 32. Mention another.
A. It looked a burlesque on any man to produce it.
Cross 33. Is there any feature in the way or manner in which it is held together that is ridiculous?
A. It is ridiculous throughout every feature and circumstance about it.
Cross 34. How are the rubber warp-threads or cords in said sample covered?
A. If I recollect right, and I think I do, some parts of them are covered with a weft-thread, and some parts are not covered at all.
782 Cross 35. When they are covered are they covered by anything but the weft-threads?
(Objected to all of this class of questions, and all the preceding ones, as it is not brought up in the direct testimony.)
A. If I recollect right it was only covered by the weft-threads so far as it was covered.
Cross 36. Is there anything ridiculous in that feature?
(Objected to as above.)
A. Very much so.
Cross 37. What is there that is ridiculous in covering the rubber warps by the weft-threads only?
(Objected to.)
A. If a man calls himself a weaver, attempting to cover the rubber warp with the weft-threads, the hiss of a goose is ridiculous, but the hiss of a cobra bella is sublime.
Cross 38. Question repeated.
A. There is nothing that is ridiculous when properly done, but when improperly done at times it makes the fabric appear ridiculous and the man that made it.
Cross 39. Irrespective of the skill displayed in the manufacture of said sample and its materials, and having reference only to the way and manner in which its several parts are held together, is said sample similar in structure to the first sample of elastic shoe-goring ever made by you?
(Objected to as before.)
A. I refer counsel to my former cross-examination in the suit of the Glendale Elastic Fabrics Company, where I gave upwards of a hundred answers to similar questions, and I have no other answer to make.
Cross 40. Question repeated.
(Same objection.)
783 A. The same answer.
Cross 41. Do you decline to answer said question?
(Same objection.)
A. The same answer.
Cross 42. Question repeated.
A. Ditto.
Cross 43. Have the exhibits produced by M'r Doebley in his testimony, marked D, F. T. S., Exhibits 14, J. G., j'r, been brought here, and have you them now in your hand?
A. I have got 5 samples of shoe-goring in my hand; suppose they are the same, can't swear to it.

Cross 44. Can you now point out any difference in the way said samples and the first samples of shoe-goring you ever made are or were held together?

(Objected to, as my direct examination speaks nothing about Doebley's shoe-webbing, and counsel has no right, under the 67th rule, to cross-examine me on my own evidence, put in on any of defendants' witnesses' evidence. If counsel will ask me to point out the sample of web meant, in appearance to what M'r Doebley gave me, I will do so.)

Cross 45. Please point out said sample, and then state any difference between said sample and the first sample of shoe-goring you ever made in the way and manner in which it is held together?

(Objected to as above.)

A. If counsel will point out the sample meant in appearance to what Doebley gave me, I will do so; but as to pointing out the difference of the samples showed to me now, as Doebly's, and as counsel has no right to produce such a sample on my cross-examination, and as for the sample made over twenty years ago, and which I have not seen for over twenty years, and which is not in evidence on either side, I cannot undertake to point out the difference.

784 Cross 46. Do you mean to say that you are unable to point out the difference, or that you will not?

(Same objection as before.)

A. The same answer as before. I have already answered the question.

Cross 47. Question repeated.

(Same objection.)

A. The same answer.

Cross 48. Do you decline to give any other answer?

(Same objection.)

A. The same answer.

Cross 49. Can't you point out any differences?

(Same objection.)

A. Same answer.

Cross 50. Cannot you describe the way and manner in which the first sample of shoe-goring you ever made was held together?

(Objected to, as the question has not been raised in the direct examination, and the question has been answered in my former examination to the same amount, some dozens of times, or a dozen at least.)

A. I have already answered the question.

Cross 51. In your sixth previous answer you say, "and as for the sample made over 20 years ago, and which I have not seen for over 20 years, and which is not in evidence on either side, I cannot undertake to point out the differences;" do you mean to say that you cannot for that reason now point out the differences?

(Same objections.)

A. Same answer.

785 Cross 52. Which sample of defendants' Exhibit 14, J. G., j'r, is like the sample M'r Doebly gave you?

A. The third one from the tag, being the centre one, is the nearest to it.

Cross 53. Are not the rubber cords entirely covered by the weft in that sample?

(Objected to as above.)

A. They are not.

Cross 54. Are they not, except where, by the compression of the rub-

ber, caused by its contraction in the fabric after weaving, is pressed out between the weft threads in certain places?

(Same objection.)

A. They are not covered, and never was covered by the weft thread, neither before nor after its contraction.

Cross 55. Where were you when M'r Doebly gave you said sample of shoe-goring web?

(Objected to.)

A. Somewhere in Philadelphia. I can't say now, but perhaps I have said where it was, and perhaps I can, by thinking whether it was in Chestnut street or in my room where I stopped in Philadelphia. I cannot say, but think it was in either one of the two places.

Cross 56. Did you receive all the samples M'r Doebly gave you at one time?

A. I think not; he said he would look again at his house to see if he could find a sample of the old forty-eight suspenders. I think the next day he said it was curious he could not find the very thing I waited to get; then he gave me that sample of shoe-goring, to the best of my recollection.

Cross 57. Did he not give you some samples at his house?

786 A. I cannot say that he did; the first time I was there he was not in; his wife told me where he would be, and about what time the next day, in Chestnut street. I called at the place about the time next day; he was not in. I left a little note for him on a desk, I think, and called again in about two hours; he was not in, but they told me where I could find him; it was a drinking saloon in Narrow street. I found him there; being a very hot day, and being very warm myself, I took a bottle of soda water, drank it, and invited him to have another bottle of soda water; he declined that, but took some claret on ice. I told him who had recommended me to call upon him; the object I had in view in calling was to get an original sample of the old forty-eight suspender, saying I had spent much time and considerable money to get the real Simon Pure article; he seemed to know all about it, and described it; told me how it was made, and said he thought he could find one. I saw him on the next day; then, I think, it was when he brought the samples of suspender webbing that I have put in evidence to-day; he said he could not find a sample of the old forty-eight suspender; described the kind of reed that they was made in, and said he could make some reeds and make me a sample. I gave him $5 to make the reeds. I then asked him if he had India rubber thread to make the sample with; he said he could get it. I asked him what kind; he said vulcanized rubber thread. I told him that would not answer, it must be native rubber thread. I told him I would try to get some and send it to him. I got John Thornley to split me some sheet rubber. I brought it to New York and cut some threads as well as I could with a pair of scissors. I sent the thread and some cotton on small spools to him to Philadelphia. I did not hear from him for some time; during that time he was in New York, whilst I was in Boston, and he called at my place while I was away. I wrote to him about hastening the matter up; about that time, I think, I received the reeds from him by Adams Express in New York. I think that his reply was that he could not procure a hand loom to make it in. I think

787 I answered him in my reply, as well as I recollect now, that he might buy a hand loom if he could not do otherwise; that I would not object. I think my words were, I would not mind going to the expense of $50 to get a good sample of what the old forty-eights were, if I could do no better, saying that I soon expected to be in Philadelphia

myself. I called upon some of the trimming manufacturers, with most of whom I had been formerly acquainted; the first one I called upon was the name of Fisher; he had not the convenience; he sent me to a man named Thorp, I think, in Market st.; he was a stranger to me. I made use of Fisher's name to him; he was willing, and had the convenience. I had the materials with me, wrapped up in a paper, to make the sample. I went to the warping mill and sat down and made a striped warp for a suspender. I fixed it in the loom, and I thought I'd try what I could do myself, and found myself too fat to get in; then I went to fetch Doebly up to the place. I brought him up to the place, as I was in haste to get away, and had no time to stop; he said he would get a sample made and send it to me, and that I must be at the expense. I said certainly, I expected to be so; in a while after, some days, or a week or more, he sent me a sample down. I think he sent word that the materials was not fine enough, and he wanted finer materials; the sample was nothing like what I wanted; if I recollect right, I sent word to him to go to M'r Horstman and get what materials would suit him. I believe he did do so—get some materials; whether he sent me or whether he made any other sample my memory does not serve, but I got tired of being troubled about it; the matter dropped, and I did not see him again, or hear from him, until I saw him at M'r Gifford's office, in the beginning part of January, as a witness against me. I have stated the matter, as far as my recollection goes, in detail, and may have made some minor mistakes, but the sum and substance of the matter I have faithfully stated from beginning to end.

Cross 58. Are you sure he did not give you some samples at his house? (Objected to as immaterial.)

788 A. I have given the narrative as far as my memory serves, and I don't know whether he did or did not, and I don't care whether he did or did not; he did give me some samples, as I have stated.

Cross 59. Did you ever see M'r Doebly at his house?

A. I don't recollect that I did. I was up there only once, at most twice, and he was not there either time, to my best recollection.

Cross 60. Are you sure he did not give you the shoe webbing at the same time that he gave you the samples of suspender webbing?

A. I believe not.

Cross 61. Are you sure he gave you the shoe webbing the day after he gave you the samples of suspender webbing?

A. I think he did; at least I am certain he gave them to me before I left Philadelphia.

Cross 62. How long were you in Philadelphia on that occasion?

A. I think only two days.

Cross 63. Did he give you all the piece of shoe webbing that he had with him, or was the piece cut off from a larger piece for you?

A. He gave me a small piece, two or three inches long; he took it out of one of his pockets, I think his vest pocket, saying he could not find a sample of the old forty-eights suspenders.

Cross 64. What then did you say to him?

A. I think he begun a talking about making a sample of the old forty-eights suspender; my mind does not recollect every little word that passed.

Cross 65. Where was this?

A. It was in Chestnut street, or in my room, I forget which; somewhere there.

Cross 66. If it was in Chestnut street, whereabout in Chestnut street?

A. We had been in the room where he stops, at some dyer's office below Second street; if he gave it to me there or when we came
789 down stairs, I can't recollect the place exactly where he gave it to me that day; he gave it to me rather privately; but he said he made shoe webbing in 1844 and sold it to John Thornley.

Cross 67. What was there in the manner in which he gave it to you that was at all peculiar? Describe exactly how he gave it to you.

A. I can't give the way and manner in words; but, perhaps, I can say something to lead a person's mind to conceive an idea which is not expressed. He handed the sample to me, and when he said he had made it in 1844, and sold the same to John Thornley, the look from his eyes and the expression of his features seemed to indicate that he was giving me some information of great importance to me.

Cross 68. Did you notice that look of his eyes particularly at the time?

A. I did. I noticed the same look in M'r Dean's eyes at times, and it reveals to my mind, when he is cross-examining me, what is going to come shortly after.

Cross 69. Did M'r Doebly's look make an impression on you at the time?

A. Not at all, as I was so far acquainted with M'r Thornley's transactions and his dealings with Doebly's father, I knew his words were false.

Cross 70. Did you then think about Doebly's father's dealings with Thornley, and that Doebly's words were false?

A. I thought about what Thornley told me about Doebly's father, and other suspender manufacturers in Philadelphia, between 1846 and 1850, and I was so well acquainted with M'r Thornley and others' repeated information about woven elastic goring, that it did not make the least impression upon me.

Cross 71. Were you and M'r Doebly sitting down at the time he gave you such samples?

A. I can't charge my mind with it, as it was of so little importance I paid no attention to it. I know one thing to my best recollection, I was in haste to get away by the train to New York.

790 Cross 72. Was it in a room he gave it to you?

A. I have already stated; you are merely dragging your time out.

Cross 73. Did you go immediately to New York?

A. My impression is, that I did go, but I will not swear positively.

Cross 74. Was any one else present?

A. I believe not.

Cross 75. When was this?

A. Some time last summer, in the warm weather.

Cross 76. Cannot you fix the date?

A. No, sir; not that I am aware of.

Cross 77. How many times on your said visit to Philadelphia did you see M'r Doebley?

A. I think about four times; sometimes I saw him twice in one day. I think I saw him four different days.

Cross 78. Why did you cut said strands of rubber for said sample that you had made with scissors instead of buying it already in strands of the manufacturer?

A. I did not know, and do not believe, that any one cut strands of native India rubber for sale. I suppose that manufacturers that used the article, cut it for their own private use and manufacture, and all such

manufacturers are, as I believe, in league against me in these suits. I would not humiliate myself to ask them a favor which most probably would have been denied.

Cross 79. What manufacturer uses native rubber in strands suitable for being woven into web of any kind and could have furnished it?

A. I do not know of any from my own knowledge, only from information in the testimony given by some of the manufacturers.

Cross 80. To what testimony do you allude?

A. I allude to one particularly, M'r Hubbard, of the Russell Manufacturing Company.

Cross 81. What did he say?

A. He said they cut their own native rubber threads; that was the substance of what he said, not his exact words.

791 Cross 82. At what time did they cut their native rubber threads according to what he said; how long since?

A. He said he was cutting them when he was giving his testimony; that is, that they were cutting them at his factory at the time.

Cross 83. Do you believe that M'r Hubbard intended to say, or intended to have it understood at the time he gave his testimony in this case, that at his factory strands of native rubber were being used for elastic webbing of any kind?

A. That was my impression, as far as I recollect.

Cross 84. Do you believe that any other manufacturer of elastic webbing for any purpose uses native rubber?

(Objected to.)

A. I have no belief in the case one way or the other; I never examined the native rubber they put in the goods, whether it is pure or otherwise.

(Witness asks counsel to confine himself to the direct examination and not to be putting questions ridiculous in themselves, no bearing upon the case nor upon the direct examination, but merely to spin out and consume time.)

Cross 85. How lately have you heard of any person making elastic webbing for the market of native rubber within ten years past, except from the testimony of M'r Hubbard?

(Question objected to for the same reason as the last objection, that I have not charged my mind with it; that I have not been in other people's manufactories, except in the Glendale Fabrics Company's once, and I have paid no attention to the suspender looms, to what they were making in them, or how they were making them, and can't charge my mind just at this moment that I saw them making them, but think they were.

792 Cross 86. Can strands of any kind of rubber suitable for weaving be purchased in the market; and, if yes, of what kind?

(Objected to.)

A. I have no knowledge about it.

Cross 87. When, after the visit to Philadelphia on which you received the samples from M'r Doebly, did you next see him?

A. I saw him in M'r Thorp's trimming manufactory in Market street, the next time I went to Philadelphia; perhaps a month or two after.

Cross 88. How came you to meet him there?

A. I called at the place he usually stops when he comes down town, in Chestnut street, and left word for him to come up.

Cross 89. What then and there occurred?

A. What I have formerly described about the warp and the handloom to make a sample of the webbing.

Cross 90. Did you have the materials with you?

A. I had.

Cross 91. Where did you cut the rubber with the scissors?

(Witness objects to this line of cross-examination, and respectfully asks counsel to examine witness on the direct testimony.)

A. In my office in New York.

Cross 92. Where did you procure the other material?

(Objected to.)

A. Of M'r Horstman, in Philadelphia, and John Thornley.

Cross 93. Where are the samples made with said materials?

(Objected to.)

793 A. I threw them amongst waste paper; they were only a few inches long, about two or three inches.

Cross 94. When?

(Objected to.)

A. When I first received them.

Cross 95. Why?

(Objected to.)

A. As they were useless for the purpose I wanted them.

Cross 96. What was their defect?

(Objected to.)

A. They were made similar to the samples I put in evidence this day, only they had a curled edge instead of a round edge.

Cross 97. Why was it so difficult to make what you wan

(Objected to.)

A. There would have been no difficulty in making it myself; what was his difficulty I can't say, only he sent me word he wanted finer materials, or something to that effect. My impressions were at the time that he wanted to get about $50 off me first, before he would make the sample as I wanted.

(Answer regarding impressions objected to.)

Cross 98. How could that be when you yourself prepared the warp, and saw it put in the loom?

(Objected to.)

794 A. In the samples sent by him to me, part of the rubber warp had been took out, and it was wove together too close—the weft threads were put together too close; not made slazy after the manner of the old forty-eights.

Cross 99. If you wanted such a sample so much, and could yourself so easily have made it, why did you not stop and superintend the making of said few inches?

(Objected to.)

A. Doebley said he'd have to get a man that knowed the old forty-eight suspender, and he'd try to get to see him in a day or two; and I was in haste to get back to New York, that I had to be in Boston in a day or two, to attend taking evidence there.

Cross 100. Having procured the materials and found a loom and a place to make it, with persons ready to assist you, why did you not weave a suitable sample when you were next in Philadelphia?

(Objected to.)

A. There was no one ready, at the time I was there, to weave a suitable sample, and when next in Philadelphia, I had given up all thought about the matter, seeing by Doebley's actions that he did not intend to make it without making me bleed for it before I got it, nor had I time if I had intended to look after it, as I had more important matters to attend to.

Cross 101. Was it not the fact that the use of native rubber had so gone out of use that it was somewhat difficult without some practice to make the article exactly as you wanted.

(Objected to.)

A. No.

Cross 102. Was said sample made with the reeds which M'r Doebley made for you?

(Objected to.)

795 A. I can't say, as I did not see it made.

Cross 103. Were said reeds present at the time the warp was made by you, and put in the loom?

(Objected to.)

A. One was.

Cross 104. Was any more than one needed?

(Objected to.)

A. No, except you wanted to make more than one sample.

Cross 105. You have produced one reed as an exhibit; where is the other?

(Objected to.)

A. One I left in Philadelphia. I have not seen it since; one I put on exhibit here; the other, I suppose, is somewhere in my office, exactly similar to the one I put in here to-day.

Cross 106. When did you order said reeds, and when were they sent to you?

(Objected to.)

A. When Doebley told me he could not find a sample of the old 48 suspender, and they were sent to me by Adams Express after that time; I can't say how long; I will further say about those reeds in this place, that two of them was spaced similar to what I put in on exhibit to day; the other one left in Philadelphia was not spaced; there was a mistake in two of them, in spacing every second dent instead of every third dent.

Cross 107. Were they sent to you by Adams Express by your directions?

(Objected to.)

A. No, not as I recollect.

796 Cross 108. Were they all ordered at once?

(Objected to.)

A. Yes.

Cross 109. If one only was required to make the sample, why did you order three?

(Objected to.)

A. I did not order three.

Cross 110. How many did you order?

(Objected to,)

A. None, but he said he should have to make a reed; I gave him $5, expecting him to produce a sample; I cared nothing about the reed; he asked me afterwards the same day if I could not procure the materials; I told him I would and it must be made of native rubber to make a sample similar to the old forty-eights.

Cross 111. Did you not tell M'r Doebley that he might make and send you two reeds, so that you could make a sample yourself.

(Objected to.)

A. No; I had made samples myself in a little model loom, but could only make them half an inch wide, and I wanted a sample the full width

of a regular suspender I showed Doebley, a sample of what I had made, not at the first interview, but afterwards.

Cross 112. Is any sample made by you an exhibit in this case?

(Objected to.)

A. No.

Cross 113. Have you any letters sent to you by M'r Doebley, and if yes, please produce them?

(Objected to.)

797 A. I had two or three, and two or three weeks ago I put them together and put them somewhere where I thought I could find them handy; I intended to have them copied and sent to the printers, and put the said letters in evidence; I have had a hunt for said letters every morning this week, more particularly this morning, but could not find them; I have such a great amount of written matter in my office, and not proper convenience for keeping them in proper order, that I sometimes have to look for a paper that I want for weeks together, and generally find it when I am not looking for it.

Cross 114. Did you look for the sample sent you by M'r Doebley?

(Objected to.)

A. I never did.

Cross 115. Did you not obtain two samples, one made with the warp, as you had made it, and the other with a portion of the warp threads taken out, because it would not pucker sufficiently with the warp as you had made it?

(Objected to.)

A. My recollection of the sample was—when I come to think of it, I can speak positively—both the kinds was the same sample; they both had the same defect, the weft threads being put too close together, and not being made slazy enough.

Cross 116. For what purpose did you want the sample you ordered made in Philadelphia?

(Objected to.)

A. To put in evidence and represent what an old forty-eight supender was, as I could not procure an original sample; I had spent many days myself in hunting for it, traveling over all the outskirts and inskirts of Philadelphia among old dealers keeping variety stores, and em-

798 ployed a man to go all through New York and Brooklyn; made all kinds of inquiries about Boston; sent instructions to Illinois to get amongst old peddlers of such goods, offering $50 for a genuine old pair of forty-eight suspenders; I went personally myself about New York among the old dealers, asking them if they could show me anything or if they had anything similar to the old forty-eight suspenders.

Cross 117. Are there any exhibits put in evidence by you which were made by you, or your directions, since the commencement of these suits, to be used in these suits?

(Objected to.)

A. I believe not, as my patent has been so long unjustly withheld from me that all the samples I think I had made had decayed; I do not recollect seeing one put in evidence either by myself or any other party.

Cross 118. When did you next see M'r Doebley after you saw him at Thorp's?

A. I believe the beginning of January, in M'r Gifford's office.

Cross 119. Did you not see M'r Doebley on any other occasion than the times you have mentioned during the visit to Philadelphia, when

you first saw him, and the time you saw him at Thorp's, until you saw him at M'r Gifford's office?

A. He came to where I was stopping at my room, and brought another gentleman with him, and begun a talking about the suspender web, saying he could be a very valuable witness for me; I told him that I wanted nothing but the truth, and wanted a sample made similar to the old forty-eight suspender; the way and the manner of the two men I did not like, but I think it might have been after I saw him at Thorp's, on the same day, and before I left Philadelphia, but anyway it was about that time I last saw him until I saw him at M'r Gifford's office; I did not charge my mind particularly with the time or date; it had passed from my mind until I saw him again, as above stated.

799 Cross 120. Tell all that you can swear to that M'r Doebley said when he and the other man called at your rooms.

A. M'r Doebley said that he could get any kind of cotton or any color of that gentleman which I understood was the occupier of the office where M'r Doebley stopped; that he would have no difficulty in making me a sample of the old suspender web; that he could be a very valuable witness for me in my suit, or something to that effect, I can't give the exact words; that he knowed all about the suspenders, and all about the suspenders that came into the market at Philadelphia that were manufactured in the East, repeating some things to me which I have before stated in my evidence, that he could be an important witness for me; I replied to him that I wanted nothing but the truth; and that if there was anything against my patent I could wish it to appear, or something to that effect; I do not pretend now to give the exact particular words, but the meaning of them; that I did not want my patent if it was not a good one. This took place in my bed-room; I got up and walked out, and they followed me.

Cross 121. Did the other man say anything?

A. Only monosyllables, seemingly assenting to all M'r Doebley said.

Cross 122. Name one expression or statement to which he replied by a monosyllable.

A. When Doebley said he could get any color of cotton of him that he wanted.

Cross 123. Name another instance.

A. When he said he could be an important witness for me.

Cross 124. What did he say then?

A. Yes; Doebley looking him in the face at the time.

Cross 125. What other instance?

A. When Doebley said he knew all about suspenders, and what kind came into the market from the East, and all the other occasions, as far as I recollect, there was a movement of his lips without any sound.

Cross 126. In answer to what other expression or statement than those already given did the other man move his lips?

800 A. I cannot now remember distinctly to state the exact occasion; but well recollect that he did move his lips on some of them.

Cross 127. Have you stated all the other man did or said?

A. To the best of my recollection.

Cross 128. Have you stated all M'r Doebley did or said at that time?

A. I have stated the substance of it; I don't pretend to give the very exact words, or the accent, or the inflexing his voice.

Cross 129. Did you at that time explain the nature of your suits?

A. No.

Cross 130. Did you explain the nature of your suits at any time to M'r Doebley?

A. I might have so far said to him that they wanted to kill my patent on the old forty-eight supender web, nothing farther.

Cross 131. Did you say so much to him?

A. I can't say positively, but I think most probably I did do so.

Cross 132. Where do you think you were when you said that to him?

A. I can't state, nor can I say that I ever positively did do so.

Cross 133. For what purpose did you tell him that you wanted the sample made?

A. I have already answered the question?

Cross 134. Did you tell him the suits were brought by you or against you?

A. I have no recollection of the matter.

Cross 135. In the interview, when the other man was present, was anything said about the shoe web?

A. Not anything; they were in my room but a very short time.

Cross 136. How certain are you that nothing was then said about the shoe web?

A. Quite positive.

801 Cross 137. Was that all that occurred between you and M'r Doebley about the shoe-web at the time he took the samples of web from his pocket and handed it to you, and said that he made it in 1844 and sold it to John Thornley, and which you say made no impression on your mind?

A. That was all, and it now comes to my recollection we were walking slowly together in the street.

Cross 138. Can you tell anything more said at that time than is embraced in question next preceding?

A. I believe that was the substance of it.

Cross 139. Can you recollect anything more that was then said?

A. I might have said, "I don't care about that," or something like that, but cannot remember the exact words of my reply, if I made any; I left him immediately, or he left me, I don't remember which.

Adjourned to Thursday, April 7, 1870, at 10 a. m.

THURSDAY, *April* 7, 1870.

Present, counsel as before.

THOMAS B. CREIGHTON, called and sworn as a witness on the part of the complainant, deposes and says:

(Complainant says that he has an important witness which is sick in bed; he has another important witness which has been sent down South; that the present witness, Thomas Creighton, has before testified in behalf of the defendants; that complainant's counsel have duly notified defendants' counsel to reproduce said Creighton for recross-examination, which they refused to do; complainant, therefore, calls him as a witness in his own behalf, having no other resource to get him before him.)

1. Q. What is your name, age, residence, and present occupation?

802 A. Thomas B. Creighton; age, fifty-six; reside at Wychoff street, Brooklyn; and am at present a shoemaker.

2. Q. What part of the city of Brooklyn is Smith street?

A. It comes into Fulton avenue near the City Hall.

3. Q. What was your father's name?

A. Patrick Creighton.

4. Q. How many houses were in Smith street in 1848 and 1849 when you resided there?

A. Well, I can only give the best of my opinion about that; I should say about 200.

5. Q. Was you living with your father at that time?

A. My father died in January, 1847, but I continued to live in that house.

6. Q. Please describe the place you lived in, and if you made boots and shoes in the same place.

A. It is the third house from Wychoff street, in Smith, and I made boots and shoes there, and had five or six men to work there.

7. Q. What was the amount of rent you paid for that place in Smith street?

A. To the best of my opinion it was from nine to twelve dollars; I had the whole house for that.

8. Q. How long did you remain in Smith street after 1848 before you came away, and where did you remove to from Smith street?

A. I think I removed from Smith street in 1849; it may have been in 1848, but I think in 1849; I moved to Columbia street, one door from the corner Atlantic street.

9. Q. How long did you remain in Columbia street before you left there, and where did you go to?

A. I had that house for two years, but let it the latter end of the second year, and removed to 37 Atlantic street.

10. Q. Was not your father living with you at the time you kept that store at 37 Atlantic street?

A. No; he was dead years before; he died in 1847.

803 11. Q. How long did you remain in Atlantic street, and where did you remove to from there?

A. I don't know how many years I was in Atlantic street; I was there a good many years; I took a farm and a hotel at the "Half-way house," in East New York, and remained there about two years, and went up to Central Park, where I had men and horses employed.

12. Q. Did you not live between '64 and '69 at the following named streets in Brooklyn: Van Brunt street, Columbia street, and Degraw street?

A. Every one of them, and kept a store in all except Degraw street.

13. Q. Do you recollect a few weeks before you gave your testimony for the defendants, coming into the office of Keller & Blake, with two gentlemen, and speaking to me while engaged with my witness in giving testimony, and coming and interrupting me at the table and asking me if I knew you?

A. There is not a word of truth in that; it is all imagination.

14. Q. To recall your recollection to it, did you not say that you bought web of me in Atlantic street in 1851?

A. No; I said no such thing to you.

15. Q. Please state what you did say.

A. I was sitting in the room before M'r Smith came in at all; he came in and passed by me, and gave a look at me, and didn't appear to know me, and took a chair and sat right opposite me; then I thought he might recollect me, and I said nothing for a few minutes; then I got up and went across where he sat, and asked him if he knew me, and told him that I bought web of him 21 years ago; then he seemed very familiar with me and seemed friendly, and there was a man, I think he was a lawyer, and M'r Smith called him to witness what I said; then he recollected, and said that he (Smith) said that he thought it was be-

tween 18 and 19 years before, and the web he had reference to was some he made for a M'r Constant, and then I brought it to his recollection that I had bought web of him two or three times previous to that.

804 16. Q. Have you not been repeating the words you gave in your testimony in M'r Gifford's office?

A. To my knowledge, I never thought of what I said until I came in here to-day, for I thought the thing was all over.

17. Q. Did you not give the same testimony before the examiner in M'r Gifford's office, after you said that this transpired in M'r Keller's office?

A. I never gave testimony but once.

18. Q. Did you not give in your testimony at M'r Gifford's office the same facts which you said transpired at M'r Keller's office?

A. I never gave testimony but the once at any office before to-day; I don't remember anything about M'r Keller's office; I was in it, but I did not give any testimony there.

19. Q. Question 17 repeated.

A. I know nothing about any such question being put to me.

20. Q. What brought you up into M'r Keller's office at that time—what business had you?

A. I got a note from some one or other to come over, and I refused to come to give any testimony for anything; they then sent some young man to go right along with me and show me the place; there was a lawyer there, and I don't know who he was; they asked me some questions at that time, and wrote down what I said, and when I gave my testimony up at M'r Gifford's office M'r Smith asked me if I would not give him the letters that was sent to me by the other people, and I did so.

21. Q. Did that lawyer bring you out of the entrance room into the middle room where I was at that time?

A. No, sir.

22. Q. Was that all the business you had at M'r Keller's office at that time?

A. That is all the business I had in going, but I wanted to see M'r Smith, for I thought I was going to give testimony in his favor.

805 23. Q. What made you want to see M'r Smith, when you had not seen him for so many years before?

A. When he used to come to my store to sell web he was a very sociable and friendly man. We were very friendly with each other.

24. Q. Did the other parties which brought you to M'r Keller's office say or insinuate that I wanted to see you, and that you was coming there as a favor to me?

A. I did understand that I was coming in his case, but they never said that M'r Smith wanted to see me.

25. Q. Did the other parties say for what purpose they were bringing you to M'r Keller's office?

A. Yes; they told me it was a rubber suit.

26. Q. How many were there in that party that brought you over?

A. Only one; a boy between 15 and 16 years of age.

27. Q. When that boy brought you into M'r Keller's office, to whom did he introduce you?

A. There were two or three clerks waiting in the room, and the boy said this is M'r Creighton.

28. Q. What became of the boy after that—where did he go to?

A. I think he left the room. I don't know where he went to. I have not seen him since.

29. Q. Who came to converse with you after the boy went out?

A. One of these three that was in the place. I can't tell which one, though.

30. Q. What did he say?

A. It was connected with this rubber matter, when I bought it of M'r Smith.

31. Q. Did he make a memorandum of it?

A. Yes.

32. Q. What was the width of the goring you said you bought of me in 1848, 1849, and 1851?

A. To the best of my opinion it was 6½ to 7½. That is for a guess. I can't say now.

806 33. Q. Did the other parties seem to acquiesce with you when you thought you was coming to give evidence in my favor, or did they contradict it?

A. They never said anything either for or against.

34. Q. When you gave your testimony in M'r Gifford's office, and said you had bought web of me in 1848, 1849, and 1851, did you really imagine that you was giving evidence in my favor?

A. No; I was really telling the truth of what happened.

35. Q. Can you mention any parties' names that you made Congress boots for while you lived in Smith street?

A. No.

36. Q. Can you mention any parties' names that you made Congress boots for while you was in Columbia street in 1848, 1849?

A. No; I cannot.

37. Q. Can you mention any parties' names that you made Congress boots for while you were in Atlantic street in 1851?

A. No; nor while I lived in that store.

38. Q. Can you mention any parties' names that you ever made Congress boots for?

A. Yes, latterly. Perhaps if I should refer to my book, I might tell about the time you speak of.

39. Q. Have you got books which will show who you made Congress boots for between 1848 and 1851?

A. Perhaps I have; there may be some old book there.

40. Q. Will you produce those books here that extracts can be made therefrom, and put on the record?

A. If he comes over I will show him the books and will instruct him how the measures were put down.

41. Q. Will your books show which were Congress boots and which not?

A. No.

42. Q. Say what the person's name was that you can first recollect that you made the first Congress boot for, where he lived, and how long it was ago.

807 A. To the best of my knowledge it was about 21 or 22 years ago. It was all of 22 years ago, and it was brown web that I bought from M'r Smith. I made them for my brother. He now lives in York street, near Jay.

43. Q. Where was you living at the time you made the boots for your brother?

A. He was living in Smith street. We all live together.

44. Q. Do you recollect any one else?

A. No; I do not.

45. Q. You are quite certain that your father died while you were living in Smith street?

A. Yes; the record of his death appears in my Bible.

THO'S B. CREIGHTON.

Subscribed and sworn to before me this 7th April, 1870.

R. E. STILLWELL,
Examiner, &c.

MAHLON MULFORD, recalled on the part of the complainant, deposes and says:

1. Q. Have you testified before in this suit?

A. I have.

2. Q. When you gave your evidence the last time you testified, what was the conversation you were holding with M'r Dean, counsel for defendant, when complainant entered the room, and was anything said about the width of shoe-goring?

A. We were talking about Boston, the weather, and things of that kind. There was no conversation about the width of shoe-goring.

3. Q. Was anything said in your hearing in M'r Dean's conversation with Lorin Brooks about the width of shoe-goring?

808 A. Nothing that I could hear.

4. Q. In your previous testimony, you said you had bought of me 4½ and 5 inches in width of shoe-goring; please say when and where it was.

A. If I answered that question in that way I did not understand it. The present width of goring now used is of that width, 4, 4½, 5, and some even 6 inches. We bought goring of M'r Smith, but can't fix the width.

5. Q. Can you testify that you ever bought goring of me more than four inches wide?

A. No; I don't know that I can. It was used narrower at that time, but I don't remember the width.

6. Q. In what year did you go to that store in Pearl street?

A. In 1850.

7. Q. How long was you in that store before you dealt in shoe elastic webbing?

A. I do not remember.

8. Q. Did you deal in it when you first went there?

A. That is a question I can't answer. I don't know whether I did or not. My part of the business is more in leather.

9. Q. Do you recollect the time when you first became acquainted with me?

A. I do not.

10. Q. Did you not become acquainted with me for the first time in that store in Pearl street?

A. I did.

11. Q. How long after you went there was it before you became acquainted with me?

A. I do not remember the time.

12. Q. Was it one year?

A. I have answered that question. It was between 1850 and 1859.

13. Q. The elastic shoe-goring that was bought by you or your partner, M'r Cary, was it bought and resold again from your store?

A. Yes; that is our business to buy and sell.

809 14. Q. Where is Clark W. Cary now, your late partner? If you know, please state.

A. We had a telegraph dispatch from him about a week ago. He was then in New Orleans.

15. Q. In whose business is he upon, and when did he go away South?

A. He is traveling for Mulford, Cary & Conkling, our house, and he went away between two and three weeks ago.

16. Q. When do you expect him to return?

A. I do not know; it depends upon circumstances; it may be three or four weeks.

17. Q. In your former testimony you said you had certain books while you were in that store in Pearl street that you would permit me, or some one appointed by me, to make extracts from, as far as related to my selling you shoe-goring. Please state why you cannot comply with what you promised.

A. A gentleman called to examine the books; I told him I had looked for them, and when we left Pearl street I suppose they got mislaid. Those books were of not much account and we were very careless of them.

18. Q. Have you at any time ever paid any money to oppose the claim of complainant; if yea, was it before or after the present suit against you?

A. We have paid something, but the time I could not say.

MAHLON MULFORD.

Subscribed and sworn to before me this 7th April, 1870.

R. E. STILWELL,
Examiner, &c.

JOHN B. IRELAND, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

810 1. Q. What is your name, age, residence, and occupation?

A. John B. Ireland; my age is 40; I reside in New York City; I am a lawyer.

2. Q. Was you connected in business with Peter J. Cutler, attorney and counsellor at law, in 1858?

A. We had offices together, and I took notes of evidence during the trial of Smith against Dodd & Wakeman.

3. Q. Was you with said Peter J. Cutler at a trial before Judge Hilton, in the court of common pleas, in the city of New York, in March, 1858, entitled William Smith against Bethuel Dodd and John P. Wakeman? Look at the paper endorsed "Common pleas, Smith against Dodd & Wakeman, copy agreement with Oberar," and say if you can recognise said paper as a copy used at said trial, in March, 1858.

A. I think this was the paper that was used on the trial.

(Paper put in evidence, marked Exhibit Smith against Dodd & Wakeman, 405, R. E. S., examiner.)

4. Q. Look at the paper endorsed Wakeman requests counsel to inspect web made by W. S., P. J. Cutter, esq., present, and say if that paper was used at said trial of Smith against Dodd & Wakeman in March, 1858.

A. Yes; I think it was.

(Paper put in evidence, marked Exhibit Smith against Dodd & Wakeman, 406, R. E. S., examiner.)

5. Q. State the substance of the evidence given by Dodd & Wakeman, at the said trial, as far as relates to the marketability of the goods at issue at said trial, and what they said they had realized from them, and to what use they had and were making of them.

A. They said the goods were worthless, and there was no sale
811 for them. They said they could not sell them and had realized

noth ing from them. They said they were worthless stuff about th store, as I understood.

(Objected to as mere hearsay.)

6. Q. Did you hear Dodd and Wakeman testify if they had made use of the goods for making a light? If yea, please state what kind of a light it was.

(Same objection as above.)

A. They testify on the stand that it was worthless stuff, to burn up, or something of that kind.

7. Q. Was you present, and did you hear the testimony of Horace H. Day, witness for complainant Smith? If yea, please state what you heard him testify to.

(Same objection as above.)

A. Yes, I was present. I took the notes of evidence as associated with M'r Cutler. I heard M'r Day's testimony. He testified that M'r Smith, from the samples shown him of M'r Smith's work at that time, had accomplished what he had endeavored to do, and had succeeded in doing.

Cross-examination:

Cross 8. By whom was P. J. Cutler, esq., employed in this case?

A. By the plaintiff, M'r Smith.

Cross 9. And you were associated with M'r Cutler in the trial of the case of Smith against Dodd and Wakeman?

A. Yes.

JOHN B. IRELAND.

Subscribed and sworn to before me this 7th April, 1870.

R. E. STILWELL,
Examiner, &c.

Adjourned to Friday, April 8, 1870, at 10 a. m.

812 FRIDAY, *April 8th*, 1870.

Present, counsel on both sides.

Complainant here puts on record the time having expired for taking testimony, and the defendants on the last day of the time for taking such testimony took testimony on their own behalf, opening their case after being closed by stipulation, and it being impossible for complainant and his counsel to attend to the taking of such testimony, being otherwise engaged in taking testimony, and complainant not knowing (not being present at the time) what the nature of such evidence is, and what proceedings will have to be took to rebut such evidence. Furthermore, two of complainant's important witnesses are absent, one being gone down South for a few weeks, the other being sick at his own house. Complainant has endeavored to subpœna him for the last four days. If counsel will consent to give complainant sufficient time to rebut the testimony which defendants took yesterday, also sufficient time to procure the said two witnesses, and for complainant to put in his testimony as an expert, I will consent that the defendants may proceed with my cross-examination. If he does not consent he must get an order from the court before proceeding any further in my cross-examination.

The counsel for the defendants in that event, rather than have the cause delayed, will waive the objection heretofore taken; that the complainant has already been examined in these cases, and will waive all further cross-examination, such further cross-examination being the

consideration the complainant offers for further time, if that will close the complainant's deposition. The counsel further says, that he took yesterday the testimony of Thomas Cory, of Canoga, Seneca County, New York, who is here for the purpose of testifying, and that he has made the requisite arrangements for said Cory to be at the office of George Gifford, esq., this day, by half-past twelve o'clock p. m., for the purpose of being cross-examined, and the complainant is
813 hereby notified thereof, that he may avail himself of said opportunity. And the counsel also says, that he yesterday took the testimony of Isaac Banister, of Newark, N. J., and that said Banister will be at said Gifford's office for the purpose of being cross-examined by the complainant, if he so desires, this day, at 2 o'clock p. m.

Counsel further calls attention to the fact that it does not appear why the testimony of the two important witnesses alluded to by the complainant could not have been taken long since; also to the statements of the complainant, already on record, that the defendants should have the present week for the purpose of taking testimony, and that therefore the complainant cannot complain that he was not present at the taking of the defendants' testimony; also to the fact that it is a long time since complainant's counsel had anything to do with taking testimony, the complainant having taken that into his own hands. Counsel for the defendants further says that the present seems to be a fitting time to terminate the taking of testimony, but that if any further agreement is to be made in the case, he desires that it be made by the counsel of both parties, that all controversy regarding it and its execution may be avoided.

Complainant replies to the statements of counsel as just given, that the major part of it is not true; that complainant has and is acting under the advice of his counsel, having had an interview with him about one hour ago, and am now acting and following out the instructions which said counsel gave to him in said interview. Complainant has been denied all through taking this testimony by defendant consuming my time, and hindering me and giving testimony in my own behalf, notifying at many times when he was going to take testimony; when they did not take testimony at the time notified then adjourning to the next day, taking no testimony, then adjourning to the next day, only to put on record copies of English patents that they had mentioned in the answer to the bill of complaint, evidently done to consume the time
814 that I should have had, and to put in my testimony in time then stipulated upon. After the time had then expired, they opened the case on their own behalf, again taking fresh testimony, saying they intended to amend their answer, and after two months' delay, had to force them before the court to compel them to amend the answer, that the case might be proceeded with. The defendants also amended their answer in the district of Massachusetts, complainant consenting to said amendment, and when the matter of amendment was heard before Judge Shipman, I told his honor that the present counsel here, M'r Dean, would put on witnesses on the last days of the time agreed upon, whatever that day might be, not giving me time to cross-examine said witnesses or rebut their evidence, which supposition then made the present counsel has faithfully carried out. In that case his honor said if that should be the case I must come before him and he would give me further time. About two months ago, or a little less, I had an interview with my counsel about putting in my own testimony then, as the defendant seemed in no hurry to take any testimony. Their advice to me was not to put in my testimony then, that they might make it a reason to ask for further

time—that I had consumed their time by taking my own testimony at that time. Complainant further remarks that on Thursday of last week they reopened the suits in the New York cases without notice, and contrary to written stipulations made by the respective counsel, who was in possession of such stipulations. Complainant further states that he can't do otherwise than according to the instructions of his counsel, and counsel for defendants must grant the request of complainant, according to his request under the instructions of his counsel.

Counsel for defendants, without reply to the many misstatements of the complainant, says there never has been and there never can be any controversy between counsel with reference to the past; and that if the complainant's counsel will deal directly with the defendants' counsel, there will certainly be no misunderstanding for the future.

815 Complainant replies he will consent to any arrangement of the Hon. T. A. Jencks, one of his counsel. Any arrangement made with any other of my counsel must have my consent if it is any way different to the advice which they have given me this morning, which I have put upon record at this time.

WILLIAM SMITH.

Subscribed and sworn to before me this 8th April, 1870.

R. E. STILWELL,
Examiner, &c.

816 In the circuit court of the United States for the southern district of New York.

WILLIAM SMITH
vs.
JOS. T. WHITEHOUSE. } In equity.

SAME
vs.
MANY OTHER DEFENDANTS. }

WILLIAM SMITH
vs.
THE GLENDALE ELASTIC FABRICS COMPANY. }

SAME
vs
NATHAN NICHOLS. } In the district of Massachusetts.

SAME
vs.
ITHIEL F. FARNUM. } Northern district of Illinois.

817 SIR: Please take notice that I shall take testimony on the part of the complainant in the above-entitled suits on Thursday, June 23d, 1870, at 11 o'clock a. m., before R. E. Stilwell, esq., United States examiner, or other competent authority, at my office, number 229 Broadway, room 11, in this city; and you are invited to attend at said time and place and cross-examine the witnesses.

Dated New York, June 20th, 1870.

FRANCIS C. NYE,
Solicitor for Complainant.

To GEORGE GIFFORD, Esq.,
Solicitor, and of Counsel for Defendants.

(Endorsed:) United States circuit court, southern district of New York. William Smith vs. Jos. T. Whitehouse, and other suits.

Service of the notice, of which the within is a copy, is hereby admitted. Dated New York, June 21, A. D. 1870.

GEO. GIFFORD,
Defendants' Solicitor.

818 Circuit court of the United States, southern district of New York.

WILLIAM SMITH
vs.
J. T. WHITEHOUSE.

THE SAME
vs.
MANY OTHER DEFENDANTS.

THE SAME
vs.
THE GLENDALE ELASTIC FABRICS COMPANY.

THE SAME
vs.
NATHAN NICHOLS. } In the district of Massachusetts.

THE SAME
vs.
ITHIEL F. FARNUM. } Northern district of Illinois.

819 *Testimony taken on the part of the complainant.*

THURSDAY, *June 24th*, 1870.

Present, Frances C. Nye, esq., counsel for complainant; George Gifford, esq., counsel for defendant.

CLARK W. CARY, called and sworn as a witness on the part of the complainant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Clark W. Cary; 45 years of age; reside in Brooklyn, and am a clerk.

2. Q. Do you know the complainant in these suits?

A. I do.

3. Q. What was the nature of your business in 1851, and where was it carried on?

A. Dealer in leather and shoe findings, at 302 Pearl st., N. Y.

4. Q. State, if you please, whether or not you ever bought any elastic fabrics for shoe gores of the complainant; and if so, when was the first purchase made?

A. I have bought such goods of him, and the first purchase was made in 1851.

5. Q. Please state whether or not you have any knowledge of complainant ever having made application for reissue of patents for making improvements in weaving corded fabrics.

A. No; I have no knowledge of anything of the kind.

6. Q. Please state whether you ever made an affidavit to be used on behalf of complainant on an application for a reissue of such patent?

(Objected to, as witness has said that he has no knowledge of any such application.)

A. No; I don't know that I have; I made an affidavit about a
820 year ago as regards when I commenced buying goods of M'r Smith; I am not sure that it was quite a year ago; that is the only affidavit I ever recollect making in regard to this case.

7. Q. Did you ever make any other affidavit in relation to buying elastic fabrics of the complainant than the one alluded to in your last answer?

A. Not to my recollection.

8. Q. Please state whether you know of any inaccuracy in such affidavit; and, if so, in what does the inaccuracy consist?

A. Well, I think I stated in that affidavit that I commenced buying goods of M'r Smith in 1850, and I find recently, by reference to the books, that it was in 1851 that I commenced buying from him.

(Answer objected to, as the books themselves are proper evidence of the fact, if so it be.)

9. Q. If the affidavit alluded to by you in your answer to question 6 states that you purchased elastic fabrics of M'r Smith for shoe gores, earlier than as stated by you in your answer to question 4, please state whether or not such affidavit is correct, and if incorrect, in what respect, and how the inaccuracy arose.

(Objected to as involving a comparison between two papers, neither of which are before the witness.)

A. In the affidavit I gave about a year ago I merely spoke from memory, but as regards the time I now give the date; I refresh my memory from the books.

(The last part of the answer objected to, as the books are the proper evidence themselves of matters contained therein.)

10. Q. What books do you refer to?

A. The books of Mulford & Cary, kept at the time this purchase was made.

821 11. Q. Did you make the original entries yourself of this transaction?

A. I did.

12. Q. Have you the books in your possession?

A. No, I have not; they are in the possession of Mahlon Mulford, my former partner.

13. Q. Will you produce the books alluded to and annex them to your deposition in this suit?

A. The said books are not under my control; I presume M'r Mulford would allow me to have them on an application for them.

14. Q. Since your answer to question 13 have you made application to M'r Mulford for the books alluded to in your previous testimony, containing the entries and transactions to which you have testified?

A. I have.

15. Q. Did you not succeed in getting those books?

A. No, sir.

16. Q. What reply did M'r Mulford make to your application for them?

A. He declined.

17. Q. Did he give you any reason for declining?

A. No; further than he asked me if they wished to keep the books here or look at them, and I told him I didn't know as regards that.

18. Q. Did not you bring those books up here to this court house, in company with M'r Mulford?
A. M'r Mulford was here in this building.
19. Q. Question repeated.
A. I was here with M'r Mulford and he had the books.
20. Q. Has M'r Mulford gone away with those books?
A. He has.
21. Q. Did M'r Mulford give you any reason for refusing to let you have the books?
A. No further than I have stated.
22. Q. What did you tell him that you wanted them for?
822 A. I told him that in my affidavit I had stated that I had refreshed my memory from the books, and that one of the parties objected to that part of my testimony, as the books should be produced.
23. Q. Was M'r Mulford your partner in 1851 at the time these transactions took place?
A. He was.
24. Q. Who owns those books?
A. M'r Mulford.
25. Q. Did M'r Mulford have a consultation with M'r Witter after arriving here a short time ago?
A. He had a consultation with the counsel for the defendants; I don't know his name.
26. Q. Is M'r Mulford one of the defendants in this suit?
A. I don't know about that, his name was not mentioned this morning.
27. Q. What is his full name?
A. Mahlon Mulford.
28. Q. What is his business, and where is he doing business?
A. Leather and shoe findings is his business, at 27 Spruce street, in New York City.
29. Q. Is he doing business alone or as a member of a firm?
A. Member of a firm.
30. Q. Please give the name of that firm?
A. Mulford, Cary & Conklin.
31. Q. Are you in the employ of that firm?
A. I am.
32. Q. Are you related to all or either of the members of that firm?
A. I am a brother to M'r Cary.
33. Q. Did M'r Witter, in his consultation with M'r Mulford, which you have just stated, advise M'r Mulford not to let you have the books?
A. I did not hear a word of the conversation.
34. Q. Did M'r Mulford tell you he was going to have a con-
823 sultation with M'r Witter or with the counsel in attendance on the part of the defendants about letting you have the books?
A. He told me at the store that he would not deliver the books until he came up and saw the counsel himself.
35. Q. After the consultation referred to, did M'r Mulford tell you that he would not let you have the books?
A. He did.
36. Q. Did M'r Mulford tell you, after the consultation referred to, that M'r Witter had advised him not to let you have the books?
A. No, he didn't tell me, I inferred that fact.
(The last part of answer objected to as irresponsive and incompetent.)

Counsel for complainant gives notice to M'r Witter, the counsel for the defendants, to produce the books referred to by witness Cary, which are sworn to be in the possession of Mulford by said Cary, on Friday at 10 a. m., to be put in evidence and attached to the deposition of said witness Cary.

Adjourned to 10 a. m., the 24th inst.

FRIDAY, *June 24th*, 1870.

Present, counsel as before.

Defendants' counsel, at the request of complainant's counsel, produces the books called for at the close of yesterday's session, and consents that any extracts made from any of the aforesaid books be taken as evidence and so regarded on the hearing with the same effect as if they were the original entries.

824 37. Q. Will you examine the book now shown to you, and say whether or not it is one of the books referred to by you in your preceding testimony?

A. It is.

38. Q. Will you turn to the page upon which the original entry or entries of the purchase of the goods by you of M'r Smith referred to by you in your preceding testimony were entered, and read said entries, giving the date.

A. May 7, 1851, 19½ yards elastic web, at 5s..... 12 18
5 yards silk, @ 14s. 7..... 19 18

The next entry is—

May 11, 5½ y'ds elastic web, @ 8s..... 5 50
" 11½ y'ds " " @ 5s..... 7 18
——— 12 68

The next entry is—

May 19, 6 yards elastic web, @ 8s..... 6 00

The next entry is—

July 10, 11½ y'ds elastic web, @ 6s..... 8 63

The next entry is—

July 14, 12 y'ds elastic web, @ 4s..... 6 00

These are all the items I find in this book.

39. Q. Are those entries the ones referred to by you in your answer to question 8?

A. They are.

40. Q. Are those original entries?

A. They are.

41. Q. What is the name of the book in which those entries are made?

A. The invoice book.

42. Q. Have you examined the ledger containing M'r Smith's account, and if so do you find any entry of the purchase of goods from M'r Smith prior to May 7, 1851?

A. I have examined said ledger and do not find any.

Witness here desires to make a correction as to the date which
825 he gave in a former affidavit, by stating that it is two years or

more ago when he made the affidavit spoken of by him as having been made about a year ago.

Cross-examined by M'r Witter on the part of the defendant:

Cross 43. Did you make the affidavit referred to on your direct examination, in which you stated that you commenced buying goods of Smith, the complainant, in 1850, at M'r Smith's request or desire?

A. I did.

Cross 44. Did he at that time appear to agree with you as to the facts therein stated?

A. In the first place he came to me and wished me to make that affidavit, and said he would have it made out and send his attorney to me.

Cross 45. Did he do so?

A. He did, but I did not see him until some time after the date was fixed in that affidavit.

Cross 46. Then M'r Smith's attorney brought the affidavit to you ready drawn up?

A. Yes, sir.

Cross 47. Did M'r Smith ever express to you any dissatisfaction with the contents of that affidavit previous to the commencement of those suits, December, 1868?

A. Not to my recollection.

Cross 48. When was the first time after the making of that affidavit that you saw M'r Smith or heard from him on this subject?

A. To the best of my recollection it was about a year ago.

Cross 49. Did he then tell you, or intimate to you, or try to convince you in any way that the date in that affidavit fixing the time when M'r Smith sold you the goods therein mentioned was too early?

A. Yes, he said I had made a mistake in the date, as he said he did not commence making the goods before the year 1851.

826 (The last part of the answer objected to by defendants' counsel as not called for and as hearsay.)

Cross 50. Were there not other books kept by the firm of Mulford & Cary, during the year 1850, than those produced here, in which entries may have been made of goods bought of William Smith, the complainant, or in which it was proper that such purchases should have been entered?

(Objected to as irrelevant.)

A. Yes; there were other books kept. There was one in which it was proper that such entries should have been made.

Cross 51. What was that book styled?

A. Cash book.

Cross 52. Where is that book, if you know?

A. I don't know.

Cross 53. When you made the affidavit referred to, was not your memory fresher than it is now, being nearer by more than two years the date when the event transpired?

A. Well, I don't know as to that; I could not speak then positively as to date, neither can I now as to the date when I first bought goods of him.

Cross 54. Then you cannot swear positively that the affidavit which you made at M'r Smith's request was not true, can you?

A. No; I cannot.

Direct resumed:

55. Q. Was the date of that affidavit fixed, as you say in your answer

to cross-question 45, before or after M'r Smith's attorney brought the affidavit to you to swear to?

A. I could not say positively.

56. Q. Did you send the affidavit back to M'r Smith's attorney for any alteration before you swore to it?

A. I did.

827 57. Q. What alteration did you require made?

A. The first affidavit he made out had something in it in regard to M'r Smith's patent. I told him I knew nothing about M'r Smith's patent; that I had bought goods of him, but know nothing about any patent to him.

58. Q. Was your attention particularly called to the date as stated in the affidavit in which you commenced buying goods of M'r Smith?

A. Not that I recollect of.

59. Q. Did you never enter cash purchases on the invoice books?

A. I don't think we ever did when the cash was paid right down when the goods were brought in.

60. Q. Have you any doubt that your answer to question 4 in your direct examination is true?

(Objected to as witness has already expressed such doubts by modifying that answer.)

A. Well, my impression was that we commenced buying goods of M'r Smith in 1850, but on referring to the invoice book I could not find any date previous to 1851, which led me to think I might be mistaken.

61. Q. Question repeated.

(Objected to as already answered fully, with reasons for the answer.)

A. I don't know that I can answer that any more fully than I have.

62. Q. Do you refuse to answer as to whether you have any doubt whatever that your answer to question 4 is correct?

(Objected to as already answered, and because the witness has said, in addition to such answer, that he don't know that he can answer any more fully than he has.)

A. I have not refused to answer any questions that I know of. I can give you my reasons why I thought I bought the goods in 1850, if you desire.

828 63. Q. Have you any doubt in your own mind that your answer to question 4 is correct?

(Objected to as already answered several times.)

Counsel for the complainant states that no answer has been made whatever, as to whether the witness has any doubt about the correctness of his answer to question 4.

A. I don't know that I can answer that any more fully than I have.

64. Q. Can you refer to any part of your deposition that states what your present belief is, as to the correctness of your answer to question 4; and, if you can, will you please point it out?

Counsel for the complainant here states that M'r Witter, before the answer to the last question, handed to the witness a portion of his deposition and at the same time pointed out to him the answer to question 60.

A. I don't know that I can state it any more fully than I have in answer to question 60.

65. Q. Can you swear that you was acquainted with M'r Smith previous to the year 1851?

A. I can't swear positively as to that.

Cross-examination resumed:

Cross 66. Please give your reasons, if you have any, why you think you were acquainted with M'r Smith in 1850.

(Objected to, as the witness has not stated that he thought he was acquainted with M'r Smith in 1850.)

Question withdrawn.

829 Cross 67. Do you think that you were acquainted with M'r Smith in 1850? If so, give your reasons therefor.

A. I do; my reasons for thinking so are that M'r Mulford and myself commenced business in May, 1850, and my impressions are that we commenced buying goods of M'r Smith very soon after we commenced business.

Direct resumed:

68. Q. At what time in May, 1850, did you and Mulford commence doing business?

A. The first part of May.

69. Q. Since your examination yesterday, have you had any conference with either of the counsel for the defendants, or any person representing such counsel; if so, with whom have you had such conference?

A. I have not.

70. Q. Have you had any conference since your examination yesterday with M'r Mulford in regard to the matters testified to by you yesterday?

(Objected to as not called out on the cross-examination, and as new matter, and an attempt by complainant to discredit his own witness.)

A. M'r Mulford called my attention this morning that there might have been goods bought of M'r Smith for which we paid him cash, which would not appear on the invoice book.

C. W. CARY.

Subscribed and sworn to before me this 24th June, 1870.

R. E. STILWELL,
Examiner, &c.

SATURDAY, *June* 25, 1870.

Present, counsel for the respective parties.

JOHN REID, being called as a witness on the part of the complainant, and being duly sworn, deposes and says as follows:

830 1. Q. What is your name, age, residence and occupation?

A. John Reid; age, 55; I reside at 40 Dominick st., New York City; I am a boot and shoe maker.

2. Q. Do you know William Smith, the complainant in these suits?

A. I do.

3. Q. When did you first become acquainted with the complainant?

A. In the fall of 1851.

4. Q. What was your business, and where was it carried on at that time?

A. I was then cutting boots and shoes for a man by the name of Robert George Hall, No. 3 Barclay street.

5. Q. State, if you please, whether or not you ever bought elastic fabric for shoe-gores, or, in other words, elastic gusset-webbing for gores for Congress boots, of the said complainant, made according to his patent; and, if you say you have, please state when the first purchase of said webbing was made.

(Objected to as calling for a construction of complainant's patent.)

A. M'r Hall bought gusset-webbing from M'r Smith, and I cut that for the insertion of gores in the Congress gaiters. As to the date of the month I cannot tell you, but it must have been, as near as I can remember, the first of September, 1851.

6. Q. Do you know of your own knowledge that the said Hall bought elastic gusset-webbing for gores for Congress boots at any time previous to September, 1851, from complainant.

A. It might have been the 31st of August, or the 27th of August, but I could not tell you to a day.

7. Q. When were you first connected in business with the said Hall?

A. On the first day of May, 1850.

8. Q. Where was said business carried on at that time?

831 233 Broadway.

9. How long did the said business continue to be carried on at 233 Broadway, and where was the business moved to from that place?

A. The business was carried on from the 1st day of May, 1850, to the 1st day of May, 1851, at 233 Broadway, and it was moved on the 1st day of May, 1851, to No. 3 Barclay st.

10. Q. During the year 1850 did you purchase any elastic gusset-webbing for gores for Congress boots of the said complainant?

A. None whatever.

11. Q. Did you at any time before May 1st, 1851, purchase any elastic gusset-webbing for gores for Congress boots of the said complainant?

A. None whatever.

Counsel for complainant here puts in evidence a certified copy from the files of the United States Patent Office of the file and contents in the matter of the reissued letters patent granted William Smith, dated January 14th, 1868, No. 2844, "for weaving corded fabrics," and the same is marked Complainant's Exhibit No. 606, R. E. S., examiner.

EXHIBIT No. 606.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file and contents in the matter of the reissued letters patent granted William Smith, dated January 14th, 1868, No. 2844, for "weaving corded fabrics."

In testimony whereof, I, Sam'l S. Fisher, Commissioner of Pat-

832 ents, have caused the seal of the Patent Office to be hereunto affixed, this sixth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

SAM'L S. FISHER,
Commissioner.

Patent Office, United States of America.

* * * * * * *

In the matter of reissue of W'm Smith's patent, April 5th, 1853, and extended, for improvement in weaving.

CITY AND COUNTY OF NEW YORK, *ss:*

JOHN REID, being duly sworn, says that he is a manufacturer of boots and shoes at the corner of Ann and Nassau street, in the above city.

And this deponent further says that he has been in the above business for the last 38 years, and has known William Smith for the last 17 years, and has known and heard of the patent of William Smith during the whole term of his patent.

And very early in the year 1850 this deponent was connected with George Hall, at 233 Broadway, in the city of New York, and that this deponent bought elastic gusset-webbing for gores for Congress boots of the aforesaid William Smith, made according to the patent of the said William Smith.

JOHN REID.

Sworn before me the tenth day of May, A. D. 1867.

CHA'S H. SMITH,
Notary Public.

[5 cent rev. stamp.]

* * * * * * *

833 12. Q. Will you look at Exhibit No. 606, just put in evidence by complainant's counsel, and say whether or not the affidavit made by you, a copy of which is contained in said Exhibit No. 606, and is now shown to you, is correct, and if not correct, please state in what the inaccuracy consists, and how it arose?

A. It is not correct. The inaccuracy arose this way: My association with Hall having been in my memory at the time I made that affidavit, and not thinking of 1850 or 1851 either. The inaccuracy consists in the date at which I say in that affidavit I bought goods of the said complainant, that is, in the year 1850. I did not buy any goods at that date of said complainant, and the insertion of the year 1850 in said affidavit was an inadvertence.

JOHN REID.

Cross-examination waived.

WILLIAM SMITH, the complainant, recalled on his own behalf:

1. Q. Have you been present during the taking of the testimony of Clark W. Cary, and did you hear the same given? If so, will you please state what you know in relation to the affidavit referred to therein.

A. I was present during the time, except during the first part of his cross-examination, and I heard the same given with the above exception. I called upon said Cary in 1867, and asked him if he would give me an affidavit in relation to my patent. He asked me what kind of an affidavit I wanted. I told him I wanted an affidavit that he had bought goods of me, made according to my patent. He answered that he could do so. I left his name with M'r Serrell, my attorney, and my attorney, I suppose, made out the affidavit and sent a notary to M'r Cary with the affidavit to swear to. From information and belief, M'r Cary
834 would not swear to the affidavit, objecting either to the form or the matter. My attorney drew up another affidavit which he sent to M'r Cary, and M'r Cary swore to it as I am informed.

2. Q. Will you look at the paper now shown you, and say if you know the handwriting of the person from whom you received it?

(Objected to as irrelevant).

A. I believe this to be the writing of Benjamin Deane. I received the paper from him in person and saw him writing on paper similar to this a few moments before he gave me this paper, but I cannot swear positively that this is the paper on which he wrote.

Complainant's counsel offers in evidence the paper referred to in the last answer, and the same is marked Smith's Exhibit 603, R. E. S., examiner.

EXHIBIT No. 603.

BOSTON, *Nov.* 8, 1869.

To William Smith, and Edward Avery, his att'y:

Please take notice that on Wednesday next, at 10 o'clock in the forenoon, at the office of George Gifford, 34 Beach street, in New York City, testimony will be taken in the several suits in equity of said Smith vs. J. T. Whitehouse, said Smith vs. Nathan Nichols, and said Smith vs. the Glendale Elastic Fabrics Company.

BENJ. DEAN,
Solicitor for Defendants.

3. Q. Did you, in pursuance of the notice marked Ex. 603, R
825 E. S., examiner, attend the taking of the testimony on the part of the defendants on the day therein named, and did you continue in attendance at various times to which the said examination was adjourned?

(Same objection as above).

A. I did, and M'r Blake, my counsel, also.

4. Q. How many witnesses were examined on the part of the defendants, in pursuance of said notice, and what were there names?

(Same objection).

A. There were seven, namely, Franklin Painter, George Pritchard, John R. Wilkins, Redmond Cooper, Isaac E. Newton, John R. Williams, Henry G. Hubbard.

5. Q. State what you know, if anything, about whether each and all the witnesses named were examined on the part of the defendants in each and all of these suits?

(Same objection).

A. I was by during all the time the several witnesses gave their testimony, and I saw the evidence took down in duplicate, M'r Gutman taking down one copy, and M'r Witter, most of the time, making another copy. I saw, several times, M'r Gutman and M'r Witter comparing their copies to have them exactly alike. I saw the witnesses sign the said copies, and at times had to wait until M'r Witter's copy was finished to sign their names to the depositions a second time.

6. Q. State whether or not you saw each one of the witnesses named sign each one of said copies?

(Same objection).

A. I heard the witnesses asked to sign their names, and they went over to the paper and wrote, but can't swear that I always saw whether they signed their names or not.

7. Q. State, if you know, how the said copies were respectively entitled?

836 A. I can't state that I know, no further than this, that M'r Gutman gave me a copy of the said evidence as the whole of the evidence took on the occasion without any title attached to it, nor was I aware that there was any distinction made in the title of the evidence until we took testimony on motion lately before the court. I then saw the record in the New York cases, also in the Boston cases, and found on the New York cases it had only got on the names of three witnesses, namely, John R. Wilkins, Redmond Cooper, and John R. Williams.

The four other witnesses examined under said notice were omitted in the New York record while the whole of the said witnesses were included in the Boston record. I found stated on the New York record the adjournment of the New York cases, while the rest of the witnesses were being examined, neither me nor my counsel being informed of any distinction made of the witnesses in the New York record. My first knowledge of it was when I was giving testimony and saw the New York record at M'r Gutman's office, in May last, or the latter part of April, nor was my counsel, M'r Blake, aware of it until I mentioned it to him a few days ago.

8. Q. State what experience you have had in the art of weaving?

A. It would be a hard matter for me to say all the experience I have had, but I know the subject thoroughly as far as relates to my patents, or the evidence given by the defendants therein, in all its various branches, including machinery, fitting up the looms, designing the patterns, buying in the raw material, selling the goods, the theory and practical results of a different combination either in machinery or on the fabrics mentioned in these suits. I understand the counts and different qualities of cotton, the different kind of reeds which such goods are made in; also the material, either separately or combined. My knoweldge extends much further than that embracing broad silk weaving. I acquired weaving silk, small wares, and the fitting up of such machinery; I understand cotton spinning, throwing of silk, in making of tram or-
837 ganzine, sewing silk, fringe-silk, machine-silk, and making and fitting up said machinery to make the work. I have been also a trimming and upholstery manufacturer, and understand the making of all the goods I have mentioned, the machinery for such manufacture; capable of buying in the stock, the raw material; making the machinery, making the goods, and selling them; and considerable practice in the manufacture of India-rubber goods. I had an experience in weaving, and the machinery belonging thereto, from 1820 until 1857. I had an experience in manufacturing upholstery trimmings about ten or eleven years. I had an experience in traveling and selling goods for over 30 years. I had an experience in manufacturing silk goods some 20 years. I had an experience of India-rubber goods near seven years.

9. Q. Have you read the testimony of William Sisserson, a witness on the part of the defendants, given in in these suits, and if so please give your opinion, as an expert, whether suspenders could be made in the manner described in the testimony of said Sisserson, and give your reasons fully therefor?

A. I have read the said testimony, and say that he could not make the supenders in the way and manner which he has described in his cross-examination. In answer to cross question 15, he says, "It appears to me that they were 30 dents to the inch." In his answer to cross-question 16, he says, "I know they were over 20—I think so." In answer to cross question 14, he says, "I think they were three times as course, according to my recollection." In answer to cross-question 27, he says, "I don't remember, but I suppose about eight to each dent."

Complainant's counsel here puts in evidence specimen of goods made in reeds 20 dents to the inch.

Defendant's counsel objects to the reception of the above, inasmuch as it is not proved to be a fabric woven with reeds of 20 dents to
838 the inch. The same is marked Smith's Exhibit No. 604, R. E. S., examiner.

Witness continues as follows:

I hold said exhibit in my hand, and the number of dents to the inch in the reed it was made in is proved by the fabric itself, being an India rubber thread in each dent of the reed, and 20 India rubber threads to the inch; and I testify that the said exhibit is made in a reed 20 dents to the inch. I further testify that there is but four cotton threads in each dent of the reed, and they are at least 4 to 5 times as fine as what Sisserson said was the material with which he made the suspenders; and that it was impossible for him to make goods with eight threads to the dent, such goods which he said he did make. Had he made goods with double cloth, one cloth on each side of the India rubber, he might have made the goods in the reeds, as only four warp threads would interlock with the weft-threads at one and the same time. His representation that there was eight threads in the dent would be simply impossible for any marketable goods to be made, as the threads in the dent would be so crowded by their number and coarseness that they could not properly interlock with the weft-threads.

In answer to cross-question 30, in which he is asked, "Had you any binding warps in making these goods?" he replies, "I don't remember that I had. I cannot tell."

The goods that said witness swore that he made, all the warp-threads, excepting the round selvage, were binding-threads, and in his warp-threads he would have about 200 binding-threads in the fabric, according to his description of it.

In answer to cross-question 25, he says, "I made both edges of the same sheaves."

He could not make a round selvage of the same sheaves that he made the body of the fabric. A round selvage is a twill made on the
839 selvage cord of the fabric, and a twill cannot be made with less than four sheaves, and as the fabric was plain work, as he represented it, he must have had two extra sheaves to make the body of the fabric, independent of the four sheaves to make the round selvage.

10. Q. Have you read the testimony of Henry G. Hubbard, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion, as an expert, whether or not suspenders could not be made in the manner described in the testimony of said witness, and give your reasons fully therefor.

A. I heard such evidence took at the time it was taken, and I hold a printed copy of such evidence now in my hands, printed by the defendants.

In answer to question 16, he says, "In the first suspenders imported, to which my attention was drawn, the entire warp was composed of rubber threads, each thread in the warp having been covered in a braiding machine, and then was woven in the loom in the same manner as Exhibit 8. Our company was, from 1834 to 1841, in the manufacture of web suspenders without rubber, and the importation of rubber suspenders interfered with our business to such an extent that I examined the imported suspenders, and determined to manufacture an elastic suspender in the place of the common web. In order to do that, the first thing necessary was to obtain the rubber thread, and not having braiding machines to cover the rubber thread, as the imported goods were covered, we wove it in the looms and covered it with the fillings, according to Exhibit No. 8, that being the most simple and direct form of making rubber web."

In answer to question 17, he says, "Each strand was braided, then a

warp made from any number of strands desired, and then woven in the loom."

Complainant's counsel offers in evidence a suspender, and the same is marked Smith's Exhibit No. 605, R. E. S., Examiner.

Adjourned to Saturday, June 25th, 1870, 10 a. m.

840 SATURDAY, *June* 25, 1870—10 a. m.

Present, counsel for the respective parties.

Examination of WILLIAM SMITH, the complainant, continued.

The witness continues:

The said exhibit is a duplicate of an exhibit, marked W, N. A. P., Examiner, as an exhibit in the above-entitled causes, by Quincy Tufts, taken, subscribed, and sworn to before N. Austin Parks, examiner, September the 8th, 1869. On page 228, fol. 897, question 3, direct, "Please take the suspender, marked Exhibit W, N. A. P., Examiner, and say how long ago you imported it." Answer. "I should say more than 30 years ago."

On page 229, fol. 902, in direct interrogatories resumed, question 4, "Did you not, while giving your direct examination, detach from the suspender marked Exhibit W a tag containing your private mark?" Answer. "Yes. I took it off yesterday."

By referring to the answer of witness Hubbard to question 17, he said the imported suspenders were woven in a loom in the same manner as Exhibit 8. By comparing the Exhibit 8, R. E. S., Examiner, with complainant Smith's Exhibit No. 605, R. E. S., Examiner, the answer of said witness, Henry G. Hubbard, is not true——

(Last 4 lines objected to as incompetent.)

as the aforesaid two exhibits, compared together, will plainly show.

In answer of said Hubbard to question 17, he gives a correct description of Smith's Exhibit No. 605, R. E. S., Examiner.

In all the descriptions throughout said witness' testimony, he does not alter the position of the rubber warp thread——

841 (Same objection as above to preceding paragraph.)

than what they were in his description of the imported suspender. They still remain and are woven in the same plane as the fibrous warp threads, nor did he make any fabric according to the patents of complainant in the manner that he has set forth and described.

(Objected to, as witness could not know as above stated.)

11. Q. Have you read the testimony of William H. Kirk, a witness on the part of the defendants, given in the New York suits on the 21st of May, 1869? and, if so, please give your opinion, as an expert, whether or not suspenders could be made in the manner described in the testimony of said witness, and give your reasons fully therefor.

A. I have read the said testimony and now hold it in my hands. In cross-interrogatory 87, "How did they pass through the reed?" Answer. "There was one in each division of the reed in connection with the binders; that is, we had a binder strand and a rubber strand in one reed."

In cross-interrogatory 91, "How many splits to the inch were there in the reeds you used?" Answer. "I don't recollect; about 7, I believe." There being but one binder-warp in each split of the reed, and there being about 7 splits to the inch in the reed, there would be but one binder warp thread between each India rubber cord. It would not interlock with the weft-threads passing across the fabric, and the India rubber cords being so far apart, the fabric, when made, would be so loose in its texture that it could be shaken apart, and the binders in the fabric would

not interlock between the rubber cords with the weft-threads passing across the fabric, as to hold the weft-threads between the India rubber cords.

12. Q. Have you read the testimony of Isaac E. Newton, a witness on the part of the defendants, given in these suits? and, if so, please
842 give your opinion, as an expert, whether or not suspenders could be made in the manner described in the testimony of said witness, and give your reasons fully therefor.

Before the answer to the last question is given, counsel for complainant offers in evidence a drawing, and the same is marked "Smith's Exhibit No. 607, R. E. S., Examiner."

A. I have read the testimony of said witness, and find that the goods could not be made in the manner he has described. In cross-interrogatory No. 14:

"Please give the proportions of the cams in length, breadth, and thickness.

"Answer. Those, Exhibit 4, J. G., j'r, would be about 8 inches from the centre of the shaft; the breadth was one-quarter of a circle. The dimension in inches would depend upon the size of the cam.

"Cross-interrogatory 15. Mention it in inches.

"Answer. They would be about six inches if it was brought out full to the outside circle.

"Cross-interrogatory 16. Please state and give the length, breadth, and dimension of the cams on which Exhibit 5, J. G., j'r, was made.

"Answer. The same sized cams would make Exhibit 5, J. G., j'r.

"Cross-interrogatory 49. When the cam shaft turned round, what did the cam strike upon?

"Answer. Upon an iron wheel, that we called the track-wheel.

"Cross-interrogatory 50. What size was that track-wheel?

"Answer. About 2½ inches diameter.

"Cross-interrogatory 51. In the working of the cams upon those treadles that were not in operation, how high would the track-wheel rise between the cams?

"Answer. About 4 inches, I should think.

"Cross-interrogatory 52. How can a track-wheel 2½ inches in diameter rise 4 inches between the angles of the cam-shaft, when the cam is 8 inches long and one-quarter of a circle in diameter?

"Answer. By the shape of the cam; the shape of the cam can be made so that the track-wheel can rise up to the hub of the cam, if necessary.

843 A quarter cam, eight inches long, from the axis of a cam-shaft, would be one-half the diameter of the circle, whose diameter would be 16 inches, and the circumference of the circle about 48 inches.

The iron track-wheel testified to by the witness would add full one inch to the breadth of the cams in diameter. In the revolution of a cam-shaft on its axis, the second cam would come upon the second treadle before the first cam on the cam-shaft could leave the first treadle, and so on to the fourth cam and fourth treadle.

The loom could not operate nor make any kind of a fabric of any description with such cams as the witness has described, upon such cam-shafts, as the warp threads could not open to make a shed for the shuttle, with the weft thread to pass through. And if the cams were made in such a shed as the witness has described, to allow the track-wheel of 2½ inches diameter, it would not leave sufficient support for the cams to be keyed upon the cam-shaft, nor would there be any space left on the circumference of the circle of the diameter of the cams for the treadle

with the track-wheel to rise up between the cams. By referring to Smith's Exhibit No. 607, R. E. S., Examiner, there is a sectional view of the cams operating upon the treadles, and it will be noticed by the representation of the exhibit that the cams represented thereon are only about one-eighth the circumference of the circle of the diameter of the cams.

13. Q. Have you read the testimony of George Pritchard, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether the witness's method of making suspenders, as described by him in his said testimony, is substantially the same as that set forth and described in the patents on which these suits are brought?

A. I have read said testimony of George Pritchard, and it is not substantially the same as set forth under my patents.

In his cross-interrogatory 89, "And every time the shuttle passed through, the shed closed and interlocked?

844 "Answer. I think so."

Such being the fact, the weaving of the fabric would be plain cloth, made in the manner that he described, having no feature in its manufacture under any of the claims in my patents. In my patents there are two weft threads between the interlocking of the fibrous warps. In George Pritchard's answer to cross-interrogatory 89, there is but one weft thread between the interlocking of the fibrous warps.

Adjourned to Monday, June 27, 1870, at 10 a. m.

MONDAY, *June* 27, 1870—10 o'clock a. m.

Present, counsel as before.

Examination of William Smith continued.

14. Q. In your answer to question 13 you allude to the claims in your patents. Will you please state whether you have examined and are familiar with the several patents upon which these suits were brought, and do you thoroughly understand the working of the same?

A. I have examined the same and are familiar with them, and I believe I thoroughly understand them.

15. Q. Have you read the testimony of Henry G. Gurney, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether or not the fabric he has described in his said testimony as being substantially the same as that manufactured under your patents A, B, and C, could be manufactured in the manner he has therein set forth and described, and give your reasons fully therefor.

A. I have read the testimony of said Henry G. Gurney, and cross-examined him myself, and will show that he could not have made the goods in the manner he has set forth according to my patent. In said Gurney's direct testimony, January 5th, 1870, 7th interrogatory:

845 "On what kind of a loom?

"Answer. On a single hand loom; high lease loom.

"Interrogatory 8. Was it the rubber warp that was held stationary; and, if yes, how?

"Answer. Yes, sir, it was the rubber warp; it was held stationary at a certain level in the loom, in the harness, and passed through the back and fore sley.

"Interrogatory 9. Was the harness or heddle that held the rubber cords stationery?

"Answer. Yes, sir.

"Interrogatory 10. Describe how you worked it.

"Answer. We had an ordinary harness in the loom, and when the loom was not at work the cotton or silk or linen warp, whatever it was, being below the rubber, and when the loom was in action part of that warp was raised by the foot by a treadle, and worked alternately up and allowed to sink again to its original position."

I now come to the cross-examination of said Gurney on the 26th day of March, 1870. In cross-interrogatory 128:

"Please describe, in making ladies' belt ribbons, all and every manner you operated with the shuttles through the web.

"Answer. Merely by throwing them to and fro, backwards and forwards.

"Cross-interrogatory 129. How many did you throw at a time through one web?

"Answer. We had only one shuttle to a space in our loom.

"Cross-interrogatory 130. Does that embrace all the looms you had?

"Answer. No, sir.

"Cross-interrogatory 131. My question was, in all your looms.

"Answer. In some looms we used half a dozen.

"Cross-interrogatory 132. How many shuttles passed through the web at the same time?

"Answer. One; sometimes two; ordinarily one.

"Cross-interrogatory 133. What kind of looms were those that passed more than one?

"Answer. High lease looms; one piece of work in the loom alone.

"Cross-interrogatory 134. Was that loom worked with the hands and feet?

"Answer. Yes, sir.

"Cross-interrogatory 135. How were the shuttles thrown across the web by hand; that is, how did the hand operate to throw them through?

"Answer. It threw them from one hand to the other, to and fro.

846 "Cross-interrogatory 137. Describe the width, depth, and breadth, and length of those shuttles.

"Answer. Five inches long, in the neighborhood of $2\frac{1}{4}$ wide and $1\frac{1}{8}$ inch deed.

"Cross-interrogatory 138. How many inches would it be from the body of the work to the heddles behind the fore sley?

"Answer. From 10 to 12 inches.

"Cross-interrogatory 141. When the shuttle passed through the web, what distance would the eye of the shuttle with the weft coming through be from the body of the fabric?

"Answer. In the neighborhood of three inches.

"Cross-interrogatory 142. When you used two shuttles at one time going through the web, was it a stationary warp?

"Answer. The middle threads were stationary.

"Cross-interrogatory 144. When you used the larger number of shuttles in making those kind of goods, how did the weaver change his shuttles when he used more than one set of double shuttles?

"Answer. He laid them down; we did not use more than two in this kind of work.

"Cross-interrogatory 145. What other kind of work did you make when you used more than two shuttles to a web?

"Answer. Fancy trimming for ladies' use."

Counsel for complainant offers in evidence a drawing, and the same is marked Smith's Exhibit No. 608, R. E. S., examiner.

Witness continues:

By referring to Smith's Exhibit No. 608, R. E. S., Examiner, fig. 1, and referring to the full lines of said figure, *a*, *b*, and *c*, *a* and *c* show the position of the shed when open above and below letter *b*, representing the stationary warp, and when said shed is closed, it interlocks with the weft-threads at the point of the stationary warp *b*, near to *d*, representing the fabric, and as the warp threads in the shed open from *b* to *a*, they pull down from the centre or stationary warp *b* the warp-threads
847 in the shed represented by *c*. In Henry G. Gurney's direct testimony, question 10, he represents the fibrous warp threads to be held down below the centre warp *b*. The dotted line in fig. 1, Smith's Exhibit No. 608, R. E. S., Examiner, represents the position of the shed as represented and described by said witness. The weights attached to the fibrous warp, to hold it in its position below the stationary warp *b*, would pull down and cause to depress the stationary warp *b* and the fabric *d*, and no marketable goods could be made with the centre or stationary warp and the movable warps lying so far below the centre of the stationary warp as to give room for a shuttle to pass beneath. By referring to said diagram, fig. 2, the interlocking of the warp-threads at *a c*, near to the point of *d*, would cause the weft-threads which would pass over the stationary warp *b* to be pulled down below the centre warp; and when such a fabric was taken out of the loom and at rest, the weft-threads that had passed over the stationary warp *b*, and been pulled down in the operation of weaving, would lengthen those weft-threads passing over the stationary warp, and cause them to be loose and open—not adhering closely to the body of the fabric. In all fabrics made or manufactured, the interlocking of the fibrous warp takes place at the centre of the fabric. In my long experience and knowledge in the art of weaving, I never saw or knew of the interlocking of the warp-threads with the weft-thread to be driven up an inclined plane by the batten or lay.

I will further show that he did not nor could not make the goods which he said he did make.

Counsel for complainant offers in evidence two shuttles, and the same are marked Smith's Exhibit No. 609, R. E. S., Examiner.

Witness continues:

These are two shuttles used in the making of fabrics such as described by said witness Henry G. Gurney. They are each 5 inches in length, 1¼ wide, §th of an inch deep. One shuttle is held in the hand be-
848 tween the first and second fingers, and the other shuttle is held in the same hand between the third and fourth fingers. By the other hand the batten is pushed back with the back part of the hand. Then the thumb of the hand holding the shuttle is placed on the edge of the shuttle, and the fore finger is brought to the point of the shuttle, and caught by the other hand between the first and second fingers. The thumb is then brought at the edge of the other shuttle, the second and third finger being placed under the shuttle, and the fore-finger being brought to the point of the shuttle, the shuttle is then thrown by the hand across the fabric, and caught between the third and fourth fingers by the other hand. The back part of one hand during the operation of throwing the shuttle holds the batten back; there being a weight or spring attached to the batten causes the batten to spring forward, when

the hand is took away from the batten, and allows the batten to strike against the fabric.

This operation continues from one hand to the other, in throwing the shuttles, as long as it is necessary to make the figure. The object of the weaver learning to work with two shuttles in one hand is to save the time and the trouble of putting one shuttle down and taking another up, in every throw of the weft.

No man could ever throw two shuttles at one time across a fabric and catch them in the other hand, that hand being engaged by holding the batten back, a centre warp being in the fabric, such as the witness, Gurney, has described as throwing two shuttles across a fabric at one time; they would have to be thrown with such accuracy above and below the centre warp, to clear the centre warp and the warp-threads, that no man could ever be capable of doing; nor can a man throw a pair of shuttles across a fabric and catch them with the other hand, that hand being in its proper position of holding the batten back.

Complainant's counsel offers in evidence diagram, figure 3, and the same is marked Smith's Exhibit No. 610, R. E. S., Examiner.

849 Witness continues:

By referring to the foregoing testimony of Henry G. Gurney, he says that the fore sley was 4½ inches in depth. In actual work, the shed of a fabric does not come to the top and the bottom of the sley, as it would cause the warp threads to chafe and cut at the top and bottom of said sley. In the diagram, figure 3, Smith's Exhibit No. 610, R. E. S., Examiner, is given the witness the full benefit of the depth of the sley, which is represented above and below the centre warp *c*, by the letters *a*, *b*. Said Gurney also stated in said testimony that the shuttles were 1⅛ inch in thickness, and where the weft thread comes through the eye of the shuttle while passing through the fabric was about three inches from the fabric. In said diagram, figure 3, letter *c*, the shed is but 1½ and 1-16 of an inch in diameter; allowing a quarter of an inch for the centre warp, would leave but 1¼ and 1-16 of an inch for the opening of the shed above and below the centre warp, which, being divided in two equal parts, would be ⅝ and 1-32 part of an inch for the shuttle to pass through; and the said Gurney testified, as before stated in his evidence, that said shuttles were 1¼ of an inch in depth, making for the two shuttles 2½ inches to pass through the opening of the shed of 1½ inch and 1-16 of an inch; that includes the thickness of the stationary warp also. Therefore, said Gurney could not make the fabric in the manner that he described.

No manufacturer would ever attempt to make suspender-webbing or ladies' belt ribbon in such a manner as Gurney has described, for the reason that such goods are made in looms with a number of fabrics made at one and the same time; and any manufacturer that would make belt-ribbons or suspender-webbing in a single hand-loom, it would cost him more for the wages of the workmen than what he could get for the fabric in the market, leaving him minus the cost of the material and other expenses; and no ladies' dress or belt ribbon, with cotton on one side and silk or other material on the other side, made with a stationary warp, has never been known to the market, neither was it ever

850 done by the said witness Gurney in any of his looms, which he had, even by his own evidence, as he stated in his evidence that all his other looms, except the single hand-loom, had only a single shuttle.

16. Q. Have you read the testimony of John Helm, a witness on the

part of the defendants, given in these suits? And if so, please give your opinion as an expert, whether or not said testimony given on the 4th day of April, 1870, of his prior knowledge of your invention and the exhibits produced by him in his testimony are true, and give your reasons fully therefor.

A. I have read the testimony of said John Helm, and cross-examined him on said testimony myself.

"Question 6. Look at Exhibit Helm, J. G., j'r, and state where that was made, if you know, and when.

"Answer. It was made at Day's manufactory, New Brunswick, N. J., I believe, in 1849.

"Question 9. Is the rubber in said exhibit vulcanized, or is it native or pure rubber?

"Answer. I believe it is vulcanized, and is composed of rubber, sulphur, and carbonate of magnesia. I was making experiments at that time with different articles, for the purpose of valcanizing, and I think it is composed as I have stated.

"Question 12. How long will rubber cured or vulcanized retain its elasticity?

"Answer. That will depend altogether on the circumstances. Rubber that is exposed to the light and atmosphere in many cases will not retain its elasticity for twelve months. If it is covered by fabrics and not exposed it will last for years.

"Question 13. For how many years?

"Answer. I have vulcanized rubber in my possession at my home that has been manufactured for sixteen years that retains its elasticity.

"Question 14. Whether its retention of its elasticity depends also on the manner in which it is vulcanized?

"Answer. It depends both on the manner and the component parts. If rubber is cured too much it will give way very soon. If there is too little sulphur it will sooner give way than if a sufficient quantity is present. If you put lampblack, white-lead, litharge, zinc, or any
851 other foreign matter in excess, it impairs the elasticity of the rubber and its durability.

"Cross interrogatory 62. Did you cut the same zinc of threads for making suspenders as you did for making the corrugated or shirred goods?

"(Objected to; not opened by the direct examination and as immaterial.)

"Answer. We did, but we had two or three machines which are used for cutting different sized threads.

"Cross-interrogatory 63. What size of thread did your finest machine cut?

("Same objection.)

"Answer. My impression was that it was nine to the inch.

"Cross-interrogatory 70. How many to the inch were the threads in Exhibit Helm?

("Objected to as leading.)

"Answer. I could not say, but I should think about nine.

"Redirect 71. Have you said exhibit in your hand? And if so, state whether the rubber strands in said exhibit were cut in any machine in Horace H. Day's factory?

("Objected to, as the witness has already sworn that all the vulcanized rubber strands used in that factory were cut in the factory.)

"Answer. My impression is now that these threads were cut upon a little machine that we got for cutting pure rubber which had an up-

right shaft, in which was a gang of circular knives running at a high speed, which knives cut into the edge of a disc of rubber, and as the rubber revolved there was another circular knife that revolved in front of the upright shaft, which cut a ribbon from the disc, as it passed around it; that ribbon dropped into a pail of water where the separate strands made by the small knives that ran against the edge of the disc had perforated them."

By referring to said Exhibit Helm, J. G., j'r, the strands in that exhibit are at about 30 strands to the inch. Therefore, the exhibit could never have been made at the factory of Horace H. Day, according to the witness Helm's testimony, as the finest vulcanized rubber cut there was but 9 to the inch. I would further state that said exhibits are now filed in court in the district of Massachusetts. I can only speak from recollecting them. There was another exhibit which said Helm put on record, of some India-rubber strands cut, remaining on a piece of
852 cloth which they were vulcanized upon; and by the witness' own testimony, and the testimony of many other witnesses given in these suits, the vulcanized rubber would have rotted and crumbled away from the cloth had it been vulcanized at the factory of Horace H. Day more than 20 years ago, as represented by said witness Helm.

With regard to that part of his testimony of cutting pure native rubber with circular knives, on an upright shaft, going at a high rate of speed, &c., could not be done, as a disc of pure rubber revolving upon an arbor would not be so rigid but what it would spring from the knives and not make a clear cut into the rubber. The only way of cutting pure rubber into threads is to cut the rubber by a large circular knife into a ribbon; you take that ribbon when cut and run it under a number of knives in horizontal position. Under those circular knives, in a horizontal position, there is a horizontal roller, made of very soft metal, so that the edges of the knife can enter into the metal a very small way in depth, so that when the ribbon is put under the horizontal circular knife, the edge of the knives passes through and below the ribbon of the India rubber and makes a clear cut through the India rubber, and separates it into strands; and when such roller has been a little while in use, and got a little wider than the edges of the knife, it stretches the India rubber at the bottom part of the thread, and does not make a clean cut. You have then to take the roller out and turn it smaller to clear out the cuts which the knives have made, and proceed with the cutting as before, and when the roller has got too small by repeated turnings down, you have to put in a new roller and proceed as before. By the manner that the witness Helm has described his cutting of native rubber, the strands would not and could not be separated one from the other; nor could he put it in any other machine, to cut it in a proper manner, as the said partial cutting which the upright circular knives would give
853 when put under horizontal knives and rollers, as before described, the India rubber would separate in small bits and scraps, instead of one continuous thread.

Adjourned to Tuesday, June 28, 1870, at 9½ o'clock a. m.

TUESDAY, *June* 28, 1870—9.30 a. m.

Present, counsel as before.

17. Q. Have you read the 15th and 16th questions put to John Helm, on his direct examination, and the answers given thereto? If so, will you state what you know in reference to such questions and answers?

A. I have read the said questions and answers, and I find that the

examiner has inserted them in the record after the said John Helm's cross examination, redirect examination, signing of his evidence, the examiner's jurat being attached thereto, such questions and answers being put on the record to represent their being put there prior to said cross-examination. On the 7th day of April, 1870, the said John Helm, M'r Dean, counsellor, M'r Witrte, who is now making copy in this present, came to me in the office of R. E. Stillwell, and asked me if I would consent to said John Helm to make an alteration in his previous record, which I refused to do. On the 8th day of April, 1870, I went down to M'r Gifford's office to cross examine Thomas Cory and Isaac Bannister, and I found on the record there that John Helm, after leaving me on the morning of the 7th, had been put on the stand by M'r Dean, without any information or notice to me or my counsel on the matter; and said John Helm had given his evidence in substance and in fact the same as the 15th and 16th direct testimony, which the examiner has inserted on the record as taking place two or three days before, which was a palpable fraud inserted on the record by said examiner. On the

854 8th day of April, 1870, when complainant went to M'r Gifford's office to cross examine Cory and Bannister, complainant entered on the record the following objection, that being the first time I had seen the additional evidence put in by John Helm:

"Complainant objects to any explanation given by John Helm after giving his testimony, cross-examined, and re-examined direct, signing the deposition, and going home, and then coming back saying how miserable he had been, swearing to greater absurdities than what he had done before; that complainant would have gone much further in his cross-examination had he not considered his testimony confuted, and complainant requests defendant to produce the said John Helm for further cross examination by complainant or the additional testimony which he has put in to be stricken out of the record."

Complainant would remark in this place on the last question of the cross-examination of George Pritchard, in November, 1869, that his answer was, "It did." The remaining part of the answer, "I think so," has been added to the record, as complainant cross-examined the witness himself the latter part of it, and is quite positive what his answer was.

Counsel for complainant propounds the following question, to be marked 18, without prejudice to any objections that have heretofore been made to any part of the testimony of Samuel L. Johnson, or any rights secured to the complainant in the examination of said Johnson.

18. Q. Have you read the testimony of Samuel L. Johnson, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether or not the evidence of said Johnson, on the 26th day of May, 1869, and 4th day of May, 1870, respectively, of his prior knowledge of your invention, is true, and give your reasons fully therefor.

855 A. I have read the said testimony referred to and cross-examined said Johnson myself. I refer to the following numbers of interrogatories in a particular manner, and to the rest of his testimony generally, namely, May 26, 1869, direct interrogatories 1, 7, 10, with the answers thereto. On May 4, 1870, direct interrogatories 4, 5, 6, 8, 15, and the answers thereto, and also the cross-interrogatories 31, 44, 45, 75, 76, 77, 78, 122, 134, 153, 154, 155, 164, 166, 167, 169, 170, 171, 172, 180, 217, and the answers thereto. By referring to the said interrogatories, which were put in the cross examination, which questions were so put

to test his knowledge of weaving, it will appear that he seemed to have no correct knowledge at all about it; that he could not describe the manner that any fabric was made which he said he had made, the manner in which he said he made them, and fitting up of said moveable harness in the way in which he said he did fit them up, he could not weave a fabric at all. When a loom is operated with lambs or jacks or tumblers, which two names are promiscuously used, sometimes being called jacks and sometimes called tumblers—which he calls pieces of wood—such looms are always operated with what is called in the trade a standing bottom, that is, the moveable warp-threads always rise above the fabric, but never sink below it. At the extreme ends of the jacks or tumblers there is an iron pin runs under them, that when they rise they fall back to exactly the same place. Witness Johnson describes the cord on the end of the fast shaft, being only four heddle-shafts, and four tumblers or jacks, the cords from the end of the first shaft being fastened to the third tumbler, and the cords from the end of the second shaft being fastened to the fourth tumbler or jack; then he describes the cord from under the harness being fastened to the lambs, and then one cord from each lamb passing down to the treadle. It being evident from such a description that when said Johnson put his foot upon the treadle the tendency would be to pull that part of the
856 harness down where the cords were detached, but the iron was lying under the extreme ends of the jacks and cords passing from the extreme ends of the jacks to the extreme ends of the heddle-shaft, the harness would be immovable in a downward direction; but even were it not so, by his description of fitting up the harness, one cord from the extreme end of the first sheave of the harness to the third tumbler, and the cord from the second sheave of the harness to the fourth tumbler; he could make but one kind of a fabric that would be plain weaving, as he could not operate with the first and second sheaves of the harness without operating on the third and fourth sheaves of the harness, yet that is the way he said he made twills, &c. When the question was put to him, on cross-examination, what kind of a fabric such kind of an operation would make, he said it would make plain cloth, which was true. When I put the question to him to describe the operation which would made a twill he could give no intelligent answer to it, but described it as a mixture of things of different fabrics, the said Johnson's answers being as meaningless and as unintelligible as a person might make who was ignorant of the art of weaving.

I will now describe the true method of fitting up a four-treadle loom, such as Johnson said he worked upon. The lambs, jacks, and heddles would be in the loom as Johnson has described it. The first sheave of the heddle would be fastened to the extreme ends of the jacks, passing from one to the other; the second sheave of the heddle would be passed in a similar way to the second jack, and so on to the fourth jack, all similar to each other; one, two, three, four. The other ends of the jacks would come to the centre part of the loom, within about three or four inches of each other.

As there was a set of four jacks at one end of the loom, and a set of four jacks at the other end of the loom, from the inside end of the jack No. 1 to the other end of the loom a double cord would pass to the inside end of jack No. 1 to the other end of the loom, hanging
857 down, about three inches in depth. So on with each set of jacks up to the fourth set of jacks.

Then you would take a double cord and noose it in the centre of the loop from loop No. 1, and pass it down through the harness to lamb No

1; then you would take another double cord and attach it to the second loop, attached to the jacks, and pass it down through the harness to the second lambs, and so on to the 3d and 4th loop and jack and the 3d and 4th lamb below the harness. In this method described, which is always used in all kinds of weaving with lambs and jacks, it will be evidently seen by this description that every sheave of the harness, together with the lambs and jacks, each one moves and operates independently itself; and if a weaver wants to move any particular part of the harness, either 1, 2, 3, or 4, all he has to do is to attach a cord from the lamb to the treadle. If he wishes with one treadle to operate on sheaves 2 and 4, he would attach cords from the 2d and fourth lambs to the treadle, and so on from any number of sheaves which he desires to move or raise up when the treadle is depressed, and by the different method of drawing in his warp in the harness and the different manner in raising the harness, composing all manner of fabrics that can be made with 4 treadles and 4 sheaves of the harness.

The testimony of said Johnson about seeing said goods made in the factory of M'r Hope, in Manchester, England, is fabulous and not true. When he said he saw such goods made in Hope's factory in 1840, he was a boy of thirteen years of age, and to my own knowledge no such goods had ever been made there at Hope's factory up to the spring of 1844, as I was frequently in the factory on business matters. M'r Hope had frequently orders come from his customers for such goods as I manufactured, and he frequently sent to me orders for such goods. I never saw in the factory of M'r Hope aforesaid any looms for making suspender-
webbing, his looms all being for the making of common tapes,
858 chintz, lace, and what is called bed-lace. By referring to Johnson's testimony he could not say what part of Manchester M'r Hope's factory was in, and seemed to know no more about it than a person who had never seen or heard of such a factory.

19. Q. Have you read the testimony of John R. Williams, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether or not the exhibit produced by him, and put in evidence November 11, 1869, on the part of defendants, and marked Exhibit 10, J. G., j'r, was made substantially in accordance with the method described in your patent for manufacturing shoe goring, and give your reasons fully therefor.

A. I have read said testimony, and was present when the testimony was given on the 11th of November, 1869.

The exhibit is substantially different from my Patent B, the warp thread not being interlocked through the back and front of the fabric, but laid in layers above and below the fabric; the weft threads not being compressed between the rubbers, but lying upon nearly a straight line upon the rubbers.

(Counsel for complainant offers in evidence a piece of suspender webbing, and the same is marked Smith's Exhibit No. 611, R. E. S., Examiner, &c.)

Witness continues:

The Exhibit Smith 611 was bought of Quincy Tufts, Washington street, Boston, Massachusetts, who said he imported them from England so ne 30 years ago. This kind of suspender webbing and Smith's Exhibit No. 605 were the two kinds made and imported from England. Witness puts in this Exhibit 611 as being substantially different from his fabric under Patent B; also to show the kind of goods that elastic suspenders were made of in England during the time that so much has been said by the defendants of goods being made in England similar to

my patent in suspenders. Nor has witness ever known or seen
859 any imported suspenders in this country, or any other, made after the manner of his patent under Division B.

20. Q. Have you read the testimony of Thomas Cory, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether or not the said evidence of said Cory of his prior knowledge of your invention, and the exhibits produced by him in his said evidence, are true, and give your reasons fully therefor.

A. I have read said evidence, and cross-examined the witness myself, and refer to the following numbers of cross-interrogatories and the answers thereto, namely: 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 45, 46, 47, 48, 49, 56, 57, 58, 59, 60, 61, 62, 64, 66, 70, 71, 79.

In his statements in his cross-examination he said he made the Exhibit Cory, J. G., j'r, in the same kind of reeds that he made his coach laces in, which said reeds had from 16 to 19 dents to the inch.

One of said exhibits was made of silk, and the other exhibit was made of cotton. I examined said exhibits at the time of his cross-examination, and the splits in the reed were neither 16, 17, 18, or 19 dents to the inch; but said exhibits being now filed in court, in Massachusetts, and no samples being given to me, and having no samples of them, I can't speak positively under oath of the exact number of dents to the inch, but can testify fully that they were not made on such counts of reeds as he testified to. He further stated that in making the silk exhibit he used double and twisted threads for the binding threads between the cords. On examination of the said silk exhibit I found that the binding threads between the cords were not made of double and twisted material. He further said that he put a rubber cord in every other dent of the reed; but on examination of said exhibit I found that a rubber cord had been put into every dent of the reed, being able to distinguish, as an expert, when a cord is put in every dent of the reed or in every other dent of the reed.

860 On examination of the cotton exhibit which said Cory put in evidence I found also in *taht* it was not made in any kind of a reed such as said Cory had testified to, neither in 16, 17, 18, nor 19 dents to the inch in the reed.

By examining the vulcanized rubber in said exhibit I found that the rubber was but of a recent date, but a few years old at the furthest; that the rubber was comparatively good and elastic, but very little of its strength lost, and could not have been made for fifteen or eighteen years after he said it was made. On examining further, and comparing the two exhibits of Cory's aforesaid, they were of two different vulcanizations, if the silk exhibit was vulcanized at all, of which I have some doubts, thinking it most probably made of pure native rubber, but would not speak positively on that point further until I can examine the said exhibit. From the evidence given, and the said exhibits put on record, that exhibits were never made by Thomas Cory, and by referring to the evidence of the next witness, Isaac Bannister, which will be brought forward, it will be seen by the evidence of both that they used but one kind of India-rubber threads in making the said exhibits.

21. Q. Have you read the testimony of Isaac Bannister, a witness on the part of the defendants, given in these suits? And, if so, please give your opinion as an expert whether or not said evidence of said Bannister of his prior knowledge of your invention is true, and give your reasons fully therefor.

(The above question is propounded without prejudice to any objection that may have been made to any part of the testimony of said Bannis

ter, and the reservation of all the complainant's rights growing out of any and all of said objections.)

I have read the testimony of said Bannister, and refer to the cross-questions and their answers, namely: 15, 16, 17, 18, 19, 20, 21, 23,
861 24, 25, 26. In the aforesaid testimony of said Bannister he said he got the India-rubber threads cut by one Denham, in Newark avenue, Newark, and that he carried the same to Thomas Cory, of which said Cory made his samples of shoe goring; that said Denham did not make a practice of cutting India-rubber threads, but only cut a few pounds for his accommodation, and that the breadth of the cloth on which the India-rubber threads were cut was three-quarters of a yard wide.

From my knowledge and experience of cutting vulcanized India-rubber threads I know it would cost a good amount of money to make preparation and procure the materials and machinery necessary for cutting said India-rubber threads; and said Bannister's testimony proving that he cut only a little for him alone, the said Denham would have laid out some thousands of dollars to accommodate said Bannister with a few pounds of rubber threads; and said Denham, according to Bannister's own showing, would have only a few dollars in return for his outlay of money.

The next point I refer to is, being cut on cloth three-quarters of a yard in width, which, from my knowledge of mechanics, is impossible to be done, because the uttermost width that has been cut of India-rubber threads is but a few inches in width, not exceeding 6, as far as my knowledge goes. The reason is that the circular knives to cut the India-rubber threads are placed upon a mandril, with washers between them to keep their respective distance apart, and then screwed together tightly to keep them firm and immovable in their place while in operation. If the mandril was of greater length than before described, and the circular knives in proportion, and screwed up tightly together, they would have to be screwed so tight to hold the middle circular knives on the mandril tight that it would have a tendency to spring the mandril, rendering the cutting-knives inaccurate, causing some of the knives to cut through the rubber and the cloth, and some of the other knives would probably not cut deep enough to cut the rubber.

862 22. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in these causes, or either of them, or that may be material to the subject of this your examination, or the matters in question in these causes? If yea, set forth the same fully and at large in your answer.

A. On the 18th day of September, 1869, before William Grier Hibler, United States commissioner, while taking evidence before him, on pages 149 and 150 of complainant's record, fol's 582, 583, 584, and 585, I swear such a record is true.

On the 5th day of November, 1869, before Lorin P. Waldo, United States commissioner, at Hartford, Connecticut, complainant was taking testimony in the above-entitled suits, of the Hon. Julius Hotchkiss. I put on record here question 10 on his direct examination, with his answer thereto. I swear that such question and answer was rendered by him.

I put on record here the evidence of the Hon. Julius Hotchkiss, taken before J. Gutman, j'r., examiner, on December 15th, 1869, in the above-entitled suits, whilst giving evidence for the defendants. I put in cross-question 31, and the answer thereto, and swear that such question and answer was given by him.

In the evidence given by Thomas Creighton of me buying goods of

him in Smith street, Brooklyn, I swear that I did not know where Smith street, Brooklyn, was until after he gave his testimony. The whole of the testimony given by said Creighton for the defendants, excepting what is stated about seeing me in 1851 in Atlantic street, is untrue.

Complainant further states that he would have put in the evidence of Firth & Pond, music publishers, up Broadway, to corroborate my testimony about my first making elastic goring in 1851, had the court allowed me to have done so.

W'M SMITH.

Inasmuch as complainant has, by the examination of Cory and
863 Reid, and by his own direct examination, consumed the ten days allowed by the court, up to half-past four o'clock of the last day, thus leaving no adequate time for cross-examination of said complainant, and inasmuch as said complainant has stated that he desires to consult with his counsel as to whether time for cross-examination should be allowed, the counsel for defendants objects to the use of the evidence of said complainant at the hearing, unless full opportunity for such cross-examination be granted, and requests the commissioner to adjourn the examination for that purpose.

Adjourned to Thursday, June 30th, 1870, at 10 a. m.

THURSDAY, *June 30th*, 1870.

Present, counsel as before.

Cross examination of William Smith, the complainant:

Cross 23. Have you filed any disclaimers in the Patent Office?

A. I have.

Cross 24. How many?

A. One.

Cross 25. At or about what date?

A. Some time about Christmas last. I will here state that I thought such a disclaimer was previously filed in 1868.

(Counsel objects to any statements by the witness which are not strictly confined to the limits of the question, which calls for the date of the disclaimers and nothing else.)

Witness continues:

I was at Washington near the fall in 1868, with L. W. Serrell, my attorney and solicitor. We were in the room in the Patent Office,
864 in room No. 7, with M'r Gregory, who had my reissued patent under consideration. He brought forward an English patent, took out in England, if I recollect right, by a man by the name of Merton, for plaited goods, which is synonymous with corrugated woven goods. M'r Serrell told M'r Gregory that he should disclaim everything claimed by that patent. M'r Serrell and me were stopping at the same hotel, the Seaton House, the same day. In the evening I went into his room; he drew out a disclaimer of the invention covered by said Merton's patent, took an impress copy of it; told me he should file it the next day. In 1869, whilst looking through my files of the Patent Office, I did not discover upon the files any disclaimer recorded. M'r Serrell, in different conversations that I had with him after that time, always spoke as if such a disclaimer had been filed; and several times, when I introduced the subject myself of the disclaimer, he did not contradict me that I was wrong in my impressions. When I found that such a disclaimer was not on file, when I came back to New York I made inquiries of M'r Serrell concerning it. He said he was under the impression that

he did not file the disclaimer. When I asked him what had become of the impress copy of that disclaimer, he said he could not tell, except it was amongst my papers, which said impress copy never had been amongst my papers, nor have I ever seen it since he took the impression of the disclaimer in his room at his hotel in Washington aforesaid.

(Counsel for defendants objects to the conversations between witness and his counsel as incompetent.)

Cross 26. What was this disclaimer which you say you filed about Christmas?

(Counsel for complainant objects to the above question, as the disclaimer itself is the best evidence.)

A. I do not recollect the wording of it, but it was to disclaim woven elastic corrugated goods, without saying whether my patents covered said corrugated goods or not.

865 Cross 27. What do you mean by woven elastic corrugated goods?

A. I mean when the elastic fabric is contracted that the fabric has a corrugated, cockley, uneven appearance.

Cross 28. What causes that uneven surface?

A. The India-rubber cords being so far apart from each other, together with the warp threads not interlocking with the weft threads in such a manner as to hold the weft threads tightly and partly around the India-rubber cords above and below in the fabric.

Cross 29. What holds in the fabric of said corrugated goods the rubber cords?

A. They are loosely held, with the movable warps interlocking with the weft threads.

Cross 30. What covers the rubber cords, top and bottom?

A. That depends on the manner that the manufacturer pleases to construct the fabric. By the testimony of some of the witnesses given in these suits, when speaking of corrugated elastic woven goods, that there were warp threads above and below the India-rubber cords, John R. Williams, a boss weaver for thirty years with the Russell Manufacturing Company, a witness brought forward by the defendants on their own behalf, said that in the woven elastic corrugated goods one side of the rubber cord was woven in a bag or sheath, covered with the warp threads, and on the under side of the cord they were covered by the weft threads only, and I know nothing to the contrary.

Cross 31. Question repeated.

A. I repeat my answer that I have given to the question fairly and squarely.

Cross 32. What samples of such goods have you seen?

A. I have seen a sample of woven elastic corrugated goods in the Patent Office, Washington, said to have been put into the Patent Office by Julius Hotchkiss.

Cross 33. What covered the rubber cords in said sample, top and bottom?

A. The weft threads.

Cross 34. Anything else?

866 A. I don't recollect anything else.

Cross 35. How far apart were the rubber cords in this sample?

A. I never measured it or took particular notice; the sample is in evidence and on record, and it will speak for itself.

Cross 36. Was it your intention to disclaim such goods as are represented by said last mentioned sample?

(Objected to, as the disclaimer itself is the best evidence of what the complainant disclaimed and intended to disclaim.)

A. It was my intention to disclaim woven elastic corrugated fabrics, and I leave to the wording of the disclaimer itself whether I intended to disclaim such goods as are represented by Julius Hotchkiss' fabric which is in evidence in these suits.

Cross 37. Do you mean to decline to answer whether you intended to disclaim the Hotchkiss fabric?

A. I don't mean to decline to answer, but I mean to disclaim all fabrics embraced in my disclaimer. Whether that disclaimer disclaims Julius Hotchkiss' fabric as aforesaid, I leave to the disclaimer itself to determine.

Cross 38. Have you a copy of said disclaimer, and will you produce it?

A. I should have a copy somewhere among my papers, and if I find it, I am willing to give a copy of it to be annexed to my deposition.

Cress 39. In your direct testimony, you have referred to a printed record of complainant's testimony in this case; will you produce said record in order that you may be cross-examined?

A. My printed record is in different parts, not bound together.

Cross 40. I call for the whole printed record of complainant's testimony.

A. Witness requests that the question be read to him wherein he referred to his printed testimony.

867 Cross 41. Do you decline to produce the printed record of your testimony?

A. I ask counsel to point out to me where I referred to it in my direct testimony, that I may judge if he is entitled to its production, and witness again requests counsel to read over to him that part of the direct testimony of witness which refers to said witness' printed testimony.

Cross 42. By whom was that disclaimer prepared?

A. By my counsel.

Cross 43. What was his name?

A. Keller & Jenckes.

(Defendants' counsel gives notice to complainant, the witness, to produce said disclaimer, or a copy thereof, at the adjournment.

Complainant consents that a certified copy of his disclaimer may be used at the trial of either cause. Complainant withdraws above consent under advice of counsel.

Defendants' counsel gives notice to complainant and counsel that he will use a certified copy of said disclaimer at the hearing of all the above-entitled suits, and states that he has sent to the Patent Office for such certified copy, and will produce it, and examine the witness in reference thereto if it arrives before the time for taking the testimony is closed, said copy having been sent for by defendants' counsel as soon as the knowledge of its existence was obtained, which was only a day or two ago.

Defendants' counsel declines to further cross-examine, because complainant does not produce the printed record of his testimony, and defendants' counsel, for the same reason, objects to the use upon the hearing of such portions of the direct testimony as are referred to or based upon matters contained in said record.

Before cross-question 40 was put, M'r Scott, as counsel for M'r Smith on this examination, left the room for a moment, requesting that the further taking of the testimony be suspended for a few moments, but re-

turned to the room before cross-question 42 was put to the witness and found that the examination had been continued in his absence,
868 and said counsel for the complainant immediately stated to the counsel for the defendants that he would produce the portion of said printed record referred to by the complainant in his direct examination, but no notice was taken of said offer, and the 42 and 43 cross-interrogatories were then put and answered, and the further cross-examination was adjourned till half past one o'clock, p. m., for lunch. About two o'clock p. m., M'r Witter, counsel for defendants, returned, and at his request caused to be entered upon the record the immediately preceding objection, declining to further cross-examine the witness, notwithstanding that before such objection was entered upon the record and as soon as the complainant's counsel was aware of the nature of the objection, he again stated to the defendants' counsel that the witness would produce the portions of said printed record referred to by him in his direct examination, and had them ready for that purpose, and said witness now produces the same.

The witness at this point desires to make a correction in one of his previous answers, and says, in addition to his answer to cross-question 39, as follows: I hold in my hand a paper, being the printed record of the portions referred to in my direct examinations, and I now offer the same in evidence, marked Smith's Exhibit 612, R. E. S., Examiner.)

EXHIBIT No. 612.

[897] 3. Q. Please take the suspender marked Exhibit W. N. P., Ex'r, and say how long ago you imported it?

A. I should say more than thirty years ago.

[902] 4. Q. Did you not while giving your direct examination detach from the suspender marked Exhibit W a tag containing your private mark?

A. Yes; I took it off yesterday.

149.

[582] At this point in the examination, William Smith, the complainant, says that he desires to make a statement, as follows:
869 I put in a specimen of dice gum elastic suspender webbing, marked No. 6, for the following reasons: That during the time of the examination of defendants' witnesses, before M'r Gifford, in New York City, this specimen of dice webbing was put in as an exhibit, and marked No. 6, for the defendants.

[583] Complainant asked permission of M'r Gifford to cut a piece of it, as it was a long piece. M'r Gifford gave complainant that permission. Complainant cut a small piece off, and marked it No. 6, same as defendants' number, but complainant finds that another specimen has been substituted, and marked No. 6, in place of the original Exhibit No. 6. I refer to M'r Blake and Hon. T. A. Jenckes for confirmation of my statement. I also state that in the cross examination of Julius Hotchkiss, on the 26th day of May, 1859, before R. E. Stillwell, examiner, on the cross [584] examination of said Hotchkiss, that a whole question and answer, between the 33d and 34th cross, which was both read and answered, is omitted, both in the printed document and in the original record, and the question was as follows: "How far apart was the India rubber thread put in the reeds when you made goods like Exhibit No. 1?" And the answer was, "In every third dent of the reed, and

binder threads were in the same dent on each side of the rubber thread." Complainant's counsel was so satis- [585] fied with the reply that said Hotchkiss made, that he cross-examined him no further on the subject, as all was gained that he was seeking to know. Complainant refers to Hon. T. A. Jenckes to be confirmed in his statement.

(Objected to as inadmissible and irrelevant, de bene esse.)

429.

10. Q. Will you swear that such a question was not put and such an answer was not made?

A. No.

Redirect:

44. Q. Can you state as an expert the substantial and radical dif-
870 ference between the woven elastic corrugated goods referred to by you in your cross-examination, and put in evidence as an exhibit by the defendants, made prior to 1850, as sworn to by the defendants' witness, Julius Hotchkiss, and your fabric, as patented in letter B of your patent, and if you can, please do so, giving your reasons fully therefor?

A. I will endeavor to do so, but the question being a particular one, and requiring a good deal of reflection, I wish to read over my own patent letter B, also the rejected patent of Julius Hotchkiss on woven corrugated elastic goods, and put in a written answer.

(Defendants' counsel objects to any answer whatever to the above question, for the reason that no comparison was instituted on the cross-examination between said Hotchkiss' fabric and said patent, and therefore the question is not in the proper line of a redirect examination.)

Complainant's counsel asked the defendants' counsel, after the above question was written, if he objected to the same, and defendants' counsel expressly waived all objection to said question.

Witness continues:

I ask for an adjournment until 10 o'clock to-morrow morning, to prepare and put in my written answer.

(Defendants' counsel further objects to such an answer as irregular and incompetent, and does not assent to any adjournment for this purpose.)

At the request of witness, the complainant and complainant's counsel, at 5 p. m., adjourned to Friday, July 1st, 1870, at 10 a. m.

FRIDAY, *July* 1, 1870.

Present, counsel as before.

Witness continues:

At the time of the invention of my patent letter B, there was
870½ nothing else used in this country for gores for Congress boots but Horace H. Day's cemented shirred goring.

I examined said shirred goring to ascertain the amount of elasticity, and found it to contain about two and a half to one; as woven goods would be liable to fray out when cut into gores for boots, I considered how I must remedy that defect in woven goods, also to increase the elasticity over and above Day's cemented goods, at the same time to hold the India rubber cords in their place and position in the fabric; I accomplished this in the following manner, namely: I made a warp of India rubber cords that would appear in the fabric, from 16 to 20 India rubber

cords to the inch, but did not confine myself to those numbers of India rubber cords to the inch, as I could somewhat vary them according to the material employed, but not to any great extent.

As a great degree of elasticity was indispensable for gores for Congress boots, I dispensed with the warp threads above and below the India rubber cords as in a suspender fabric; as such warp threads checked the contraction and stretch of said India rubber cords, as the crinkling of the movable warp threads, with the weft threads above and below the India rubber cords, was not one-half as much as could be obtained in the movable warp threads between the cords, if such warp threads above and below the India rubber cords were dispensed with.

In order to obtain a great degree of elasticity with firmness of fabric, I chose movable warp threads of sufficient strength to bear a good degree of weight upon them, and the greater the number of movable warp threads between the cords, the better and firmer would be the fabric, as the interlocking of such warp threads with the weft threads pulled such weft threads very tightly and partly around the elastic cords; so that when the weft threads had passed above and below the elastic cords, said weft threads would meet (or nearly so) around the elastic cords, causing the weft threads, instead of the warp threads, to form a tube for the elastic cords to lie in.

871 In each dent or split in the reed I put at least four movable warp threads (the more the better if the fabric would bear it, but generally four threads is the most that can be worked), in the midst of which I put an elastic cord, that is, I put two movable warp threads on each side of the elastic cords, and so on; in every dent or split of the reed, excepting one dent on each edge of the fabric, where I put but two movable warp threads.

The tightness whereby the movable warp threads interlocked with the weft threads would cause the movable warp threads to lay at rest about the centre of the elastic cord, causing the cords to appear ribby on the surface of the fabric; and when the weft threads were of silk, as the ribs on the surface were most prominent to the eye, would cause the fabric to have a very silky appearance, as the movable warp threads might be of cotton, and being partly concealed from view between the elastic cords; and if the cotton threads in the movable warps were well dyed, it would take a close examination to see if those threads were silk or cotton. I obtained by my improvement in the way aforesaid from four to five to one of elasticity in making the fabric with silk weft, and two to three when the fabric was made of cotton, being two hundred to four hundred per cent. more of elasticity than had ever been accomplished in any woven fabrics before my improvement in my patent letter B.

By adjusting the fibres and movable warps, and the weft threads with the elastic cords, I carried the interlocking movable warps with the weft threads in an even uninterrupted manner down the whole contraction of the fabric to 350 to 500 per cent. of the length of said fabric, if such degree of elasticity is required, having no cockly or uneven appearance, but having a smooth, beautiful appearance on the face of the fabric, answering the purpose they were chiefly designed for, that was, gores for Congress boots, the manufacturer having obtained sufficient elasticity, cheapness, and durability of the fabric, my fabric having driven all others out of the market for shoe goring.

872 In the rejected patent of Julius Hotchkiss for corrugated woven goods, by examining the Exhibit C C C, put on records in these suits by the complainant, marked "Julius Hotchkiss, Waterbury, Connecticut,"

I find that said Julius Hotchkiss, in order to obtain one hundred per cent. of elasticity in his corrugated woven fabric, had to arrange his India rubber cords and his movable and interlocking warp threads with the weft threads in such a manner that they would corrugate, putting his India rubber cords far apart and his interlocking warp threads held but loosely, while interlocking with the weft threads, so that they would not carry down the interlocking warp threads with the weft threads in an even manner, but the said interlocking warp threads with the weft threads would run out of the plane of the India rubber cords, they sometimes being above and sometimes below the plane of the India rubber cords, causing the fabric to corrugate and having an uneven and cockley appearance.

This would be the result of all the exhibits put on record by defendants' witnesses, said to be made prior to 1850. If there were sufficient elasticity in them they would corrugate and have a cockley appearance.

As for the question of degree between my patent in letter B and all the exhibits put on record by defendants' witnesses, sworn to be made prior to 1850, I would remark, as an expert, that all things are in a degree more or less and there is nothing new; but no degree of any amount was ever made or invented that formed a fabric similar to mine before my improved invention; and if degree is considered, it is a combination of degrees of weight and numbers of movable warps, a degree of tightness in the weft threads and movable warp threads, a degree of distances of the elastic cords, a degree in the interlocking warp threads with the weft threads in an even, uninterrupted manner when the fabric is contracted; in fact, there are so many degrees combined that they produce an entirely new fabric never before seen or known before my
873 invented improvement in weaving corded fabrics, and for shoe goring and for other purposes which are in use throughout the world.

WILLIAM SMITH.

Subscribed and sworn to before me this first day of July, 1870.

R. E. STILWELL,
Examiner, &c.

The U. S. Patent Office to all persons to whom these presents shall come greeting:

This is to certify, that the annexed is a true copy, from the records of this office.

In testimony whereof, I, Sam'l S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirtieth day of June, in the year of our Lord, one thousand eight hundred and seventy, and of independance of the United States the ninety-fourth.

[SEAL.] SAM'L S. FISHER,
Commissioner.

To the Commissioner of Patents:

Your petitioner, William Smith, of the city and State of New York, represents that letters-patent of the United States were granted to him, April 5th, 1853, and extended for seven years, April 5th, 1867, that said letters-patent were re-issued June 18th, 1867, and again re-issued in three divisions; that he has reason to believe that the specification
874 and claims of division B of said reissue, dated June 30th, 1868, No. 3,014, through inadvertence and mistake, are too broad, including that of which he was not the inventor.

Your petitioner hereby enters the following disclaimer:

I hereby disclaim a fabric in which the warp and weft threads are so interwoven between the elastic cords as to form strips of shirred cloth between and by the contraction of the elastic cords, the warp threads in my improved fabric being only interwoven with the weft threads, for the purpose of binding them tightly around the elastic cords.

New York, January 22d, 1870.

WILLIAM SMITH.

Witnesses:
ANDREW J. DE LACY.
W'M H. BISHOP.
Ex'd.—E. M. H.

875 Circuit court of the United States, southern district of New York.

WILLIAM SMITH
vs.
J. T. WHITEHOUSE AND OTHER SUITS.

SAME
vs.
NATHAN NICHOLS. } In the district of Massachusetts.

THE SAME
vs.
THE GLENDALE ELASTIC FABRICS COMPANY. } In the district of Massachusetts.

SAME
vs.
ITHIEL F. FARNUM. } Northern district of Illinois.

876 It is hereby stipulated and agreed by and between the respective counsel, complainant and respondent in the above-entitled cases, that a certified copy of the disclaimer filed by W'm Smith, complainant, above-named, on the 22d day of January, 1870, relating to his re-issued letters-patent, the original whereof was dated April 5th, 1853, be used by either party upon the hearing of either or all of said above-entitled cases with the same effect as if properly introduced in evidence before the examiner, a certified copy of which said disclaimer is hereto annexed, marked "Smith's Disclaimer."

FRANCIS C. NYE,
Solicitor for Complainant.
GEO. GIFFORD,
Solicitor for Defendant.

877 Circuit court of the United States. In chancery.

WILLIAM SMITH
v.
J. T. WHITEHOUSE. } Southern district of New York.

SAME
v.
NATHAN NICHOLS. } District of Massachusstts.

SAME
v.
GLENDALE ELASTIC FABRICS CO. } District of Massachusetts.

SAME
v.
ITHIEL P. FARNUM. } Northern district of Illinois.

878 At Chicago, in said northern district of Illinois, on this 31st day of March, 1870, before J. L. High, special examiner.

Present, Henry S. Towle, esq., of complainant's counsel; Edward S. Evarts, esq., of defendants' counsel.

CHARLES O. THOMPSON, a witness called on behalf of said complainant, having been first duly sworn, was examined in chief by M'r Towle, and deposed as follows:

1. Q. State your name, age, residence, and occupation.

A. My name is Charles O. Thompson; age, 47; residence, Chicago; occupation, shoe dealer.

2. Q. Are you one of the several defendants in the suits under the Smith Elastic Fabric Patent now pending in the United States circuit court at Chicago?

A. Yes, sir.

3. Q. Are you selling boots and shoes with the elastic gore in them?

A. Yes, sir.

4. Q. How long have you been selling boots and shoes of the description named?

A. About 27 years.

5. Q. Have boots and shoes with the elastic fabric gore been sold for that length of time in the market?

A. Not quite. I think they didn't use those elastic gores, not very much, before '48 or '49.

6. Q. By whom is the defense in the suits in which you are a defendant being conducted?

A. By Hitchcock, Dupee and Evarts; that is my understanding of the case, so far as I know.

7. Q. Are Mess'rs Hitchcock, Dupee and Evarts entrusted with the entire management of such defense?

A. So far as I know they are.

8. Q. Do you know the amount of compensation that the counsel named are to receive or have received for their services?

879 A. No, sir; I do not.

9. Q. Do you state, then, that no compensation has ever been agreed upon?

A. So far as I know there has been none.

10. Q. Will such compensation, whatever it may be, be paid by the Chicago defendants alone?

A. Certainly for their defense, for their special defense. I know no other arrangement.

11. Q. In the event of a decision of the suits pending here in favor of the complainant, would the amount of the decrees and costs have to be paid by the Chicago defendants without aid or assistance from abroad?

A. I don't know why they would not. I don't know who else would pay.

12. Q. If paid by the Chicago defendants, would you not be imdemnified to the extent of the amount expended by parties in the New England States?

A. I don't think we could hold them.

13. Q. Do you not have a guarantee of protection from parties East interested in the manufacture and sale of boots and shoes with the elastic gore—a guarantee against any losses that may occur to you from suits brought under the elastic fabric patent?

A. We do not.

14. Q. Will you positively state the fact to be that the vendors and importers at Boston and Lynn have never given any such guaranty to the house of which you are a partner?

A. Never, sir. I have bought all the goods and had all the conversation with them.

15. Q. Do you know of the giving of such guaranty to any other wholesale boot and shoe house in Chicago?

A. I have heard such matters spoken of, but I don't know of a single house, of my own knowledge, that ever held any guaranty of that kind from the parties of whom they buy these goods.

16. Q. Do you know of any similar suits now pending elsewhere?

880 A. I hear of them, but I don't know of them of my own knowledge. I would answer that I don't know, for I don't.

17. Q. You have stated that Mess'rs Hitchcock, Dupee and Evarts, of Chicago, have the entire charge of the defense of these suits. Do you mean by this that you don't know that other counsel are employed assisting in this defense?

A. I don't know that others are employed, but I may have heard it spoken of at the time; I have had but little to do with that matter myself. At the commencement there was some one else talked about, but who I don't know. I don't know that any arrangement was ever made with anybody else. I wouldn't know that as well as M'r Sawyer, of our firm.

18. Q. You then state positively that you know nothing of any suits pending elsewhere, and nothing whatever of the defense of such suits?

A. Not personally; no, sir.

19. Q. Do you know of any general fund being made up in New York, Boston, and Chicago for the purpose of paying the expenses of the suits in different parts of the country?

A. No, sir; I do not.

20. Q. And you have no knowledge of any combination in Chicago of wholesale dealers towards such a fund?

A. No, sir.

21. Q. Do you know of any combination founded for the purpose of defending suits brought by M'r Smith upon his patent; or, in other words, for the purpose of trying to break down his patent?

A. No, sir. It was agreed among the principal dealers in Chicago that the expenses of these suits in Chicago should be divided pro rata according to one's business. For instance, if a man did $500,000 worth of business he was to be taxed so much, and if he did $100,000 worth he was to be taxed accordingly.

881 22. Q. To the best of your knowledge have your counsel named in Chicago been instructed to arrange for any such combination as referred to in the last interrogatory?

A. I have never known anything of the kind.

23. Q. Have any of the Chicago defendants to your knowledge when East, in New York and Boston, proposed or encouraged the project of forming a combination?

A. I may have heard of some such remarks being made, but I know of no action taken.

24. Q. The combination of which you have spoken is confined to Chicago alone, and refers alone to the suits pending here?
A. Yes, sir; that is all. We signed a paper to that effect.
25. Q. And it had no relation whatever to the suits abroad?
A. None whatever.

Cross-examination waived.

C. O. THOMPSON.

Sworn and subscribed before me, this 31st day of March, 1870.

J. L. HIGH,
Special Examiner.

A copy.

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Illinois:

I, James L. High, special examiner, do hereby certify that the foregoing deposition of Charles O. Thompson was taken by and before me by consent of counsel in said cause; that the parties to the same
882 were represented at the taking of the same by their counsel as therein appears; that before testifying, the said witness was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that his deposition was by me reduced to writing from his statements, and that he afterwards subscribed the same in my presence; and that I am neither attorney nor of counsel for any of the parties in said deposition or caption named, and am in no wise interested in the result of said cause.

Witness my hand and official seal at Chicago, this 14th day of April, A. D. 1870.

[L. S.]

J. L. HIGH,
Special Examiner.

APPENDIX.

883 OBJECTIONS TO THE REISSUE OF DIVISION B OF PATENT OF WILLIAM SMITH, APRIL 5, 1853; ONCE REISSUED JUNE 18TH, 1867. BROWN & BEADLE, OCT. 16, A. D. 1867. BROWN & BEADLE, SOLICITORS OF AMERICAN & FOREIGN PATENTS, WASHINGTON, D. C.

884 In the Patent Office of the United States.

In the matter of the reissue of letters patent granted to William Smith, April 5th, 1853, once reissued June, 1857, and now again to be reissued in three parts.

Objections to the reissue of division B.

STATE OF THE CASE.

Long before the invention patented to William Smith, April 5, 1853, a well-known fabric was made, called "corded goods," whose peculiarity is, that one "shed" of warp is composed of larger and different fibres, or cords, from the other sheds, and the "filling" is always passed outside of those larger cords or warps, and is interlaced between them by the intermediate smaller warps. Either the same or different kinds of filling may be used for the opposite sides of the goods; but in either case, the cord warps are never exposed to view. Some of these goods have only one pair of warp threads to each cord, in which case the greater part of the surface appears corded; and some of them have several warps between the cords, in which case the surface appears smooth for a greater part of the width than is made prominent by the cords. Some o' these goods had the cord warps of non elastic fibres, and some of them
885 of India-rubber threads; and the goods were elastic or not accordingly. All these goods are perfectly described and comprehended in the claim which William Smith now proposes to take in a reissued patent, in these words: "A fabric formed with central warps, inclosed by the weft-threads that are held upon the surface of the centre warp, by the interlocking of the middle warps between the centre warps, thereby causing the weft-threads to be pressed tightly upon the centre warp." And such a claim as that would cover all these goods, which were known and used before M'r Smith was born.

On April 5th, 1853, William Smith took a patent for a process of weaving those goods, which depended for novelty upon the manner in which the loom was operated.

The patent comes under the statutory division of "an improvement or a machine"; and the word process is used to explain that improvement.

In 1849, four years earlier, the same improvement was patented in England, where it is now public property, and where Smith alleges it is now used to weave shoe-gores. In 1867 Smith extended his patent by swearing back his invention before the English patent; and in June, 1867, he reissued the patent, with a somewhat different claim from the original one, but still with a claim only for the process he invented. He now applies for another reissue in three parts, one for the process, one for some trifling detail in the loom, and one for corded fabric generally, in the language quoted above.

The reason of this attempt is, that Smith undertook to levy a contri-

bution upon about fifty shoemakers and others who were using English shoe-gores, which he alleges were made on the English machine similar to his, and patented in England in 1849; and he actually commenced about fifty suits against these people for injunctions; but when he found that instead of paying the few dollars or cents which he demanded, they refused and filed demurrers, on the ground that the inventor of one sort of loom for weaving an old fabric cannot patent the particular
886 pieces of that fabric made on his new loom, he had no other resource than to come to the Patent Office and endeavor to add to his original patent for the process another one for the fabric; and that is now the claim.

The patent of 1853 contains all that is necessary to know in order to refute this pretension. In that patent M'r Smith states very distinctly the thing he invented, and the reason why it is an improvement.

He says that in the old process of weaving the goods the cord-warps were raised and lowered by the "heddles" in the same way that the middle warps were, from which three evils resulted, according to M'r Smith. First, the goods were not so smooth when woven; second, the cord-warps, being raised by the heddles, were subjected to more friction than if left still, and therefore were more liable to break in weaving; and, thirdly, only one shuttle could pass at a time when the cord warps were raised and lowered, whereas, if stationary in the centre, and the middle sheds were separated above and below, two shuttles could pass simultaneously, "requiring but half the time," thereby "producing a corresponding saving of cost."

The advantages of the machine, as stated in the patent, are: 1st, that the corded fabric in the old loom "has ribs produced on its surface, caused by the India rubber, in raising and lowering, imbedding itself in the filling"; whereas, by the use of the new process, "but a slight rib is formed in the surface of the goods"; and, 2d, that it is a cheaper way of weaving, because the warps don't break as often, and it weaves twice as fast. And the reason why these advantages result is one single idea, viz, that in weaving the cord-warp is held stationary in the loom; in other respect it is the old operation.

887 ARGUMENT.

No reissue of the sort proposed can be legally granted to W'm Smith—

1st. Because he is not the inventor of the "fabric" which he proposes to patent; and,

2d. Because, if he were, it cannot be patented on the papers and model to which he is confined on reissue.

First. He is not the inventor of the fabric or manufacture which he proposes to patent. A textile fabric is known by the arrangement of the fibres which compose it, and a new fabric must show a substantially new arrangement or combination of fibres. In order to found a patent on a new fabric it is immaterial by what machine it is made. The inventor of plain cloth could patent a "fabric composed of fibres laid at right angles to each other, and alternately crossing each other," although made by hand; and the inventor of a loom for weaving that fabric would be subject to the prior patent for the fabric itself, and could not have another patent for the fabric because it was made on his loom instead of by hand. His loom could be patented, and he would have all the advantages which it possessed over the old method in cheapness and better finish; but that is all. Before the Jacquard loom was invented a

fabric was used by the draw-boy process, similar to that which the Jacquard produced, but not so smooth or perfect, because the warps were lifted by hand instead of machinery; but certainly the inventor of the Jacquard loom could not claim as a new fabric the pictured goods made by his loom. The case is precisely similar to this one, and the advantages of the Jacquard are precisely what the patent claims, viz, a more perfect finish and cheaper weaving.

The fabric, for which Smith now claims a patent, is made with a series of warps, of which one out of every certain number is a cord, or
888 large warp, and which is always covered by the filling on both sides. In the simplest form of it a section is shown in the accompanying sketch:

Figure 1 represents a section through the cloth, showing a filling of red on one side and blue on the other, and two middle warp threads, but any number may be used.

This is the simplest form.

Figure 2 represents a top view of the goods, and Figure 3 a section lengthwise through one of the middle warp threads. This is the fabric that would be produced by the loom of Smith as far as the drawing indicates, but no description of that fabric is given in the patent, and the Figure 3 of the patent does not show how the fabric would appear if cut crosswise. This is an old, well-known fabric, and the patent does not aver it to be new or describe it at all, but, on the contrary, speaks of the fabric as old, and describes how it was usually woven—that is, by moving the cord warps as well as the middle ones. It is evident, therefore, on the face of the paper, that Smith is not the inventor of the fabric, and does not claim to be.

889 Secondly. If he were the inventor, he could not patent it by way of reissue on the papers now before the office. A patent can only be granted in law for one of four things—"an art, machine, manufacture, or composition of matter," or for an improvement in one of these. A new fabric is a "manufacture," and cannot be patented in the same patent with a "machine" or "composition of matter."

The inventor of a shoe-last, and of a machine for turning shoe-lasts, cannot patent both in the same patent. They are different subjects, and if an original patent cannot be taken for two different subjects, it follows that an original patent for one subject cannot be reissued in two patents for two different subjects. In this case a patent for a single subject, viz, "an improvement on a machine," is attempted to be reissued in two patents, one of which is for all that the original patent covers, and the other for a new "manufacture," which may be made on that machine or upon some other.

But if it were lawful to reissue such a patent under any circumstances, it could not be done in this case, because the thing claimed is a manufacture, and there is no description of the manufacture given in the patent, nor was there any sample of it deposited with the original application. If this were a new manufacture, a full and exact description of it must be given, distinguishing it from other manufactures known before, and a sample of it must be filed, and the inventor must swear that he believes himself to be the inventor of that new "manufacture." None of these things is done. On the contrary, the fabric produced is referred to frequently as made on other looms; and the only attempt is to show how this new loom or process will make that same fabric cheaper and better. The only specific reference in the original patent to the fabric is made to show how the loom works in producing it, and is necessary in order to illustrate the process. It is in these words: The loom in working forms a fabric, as shown in large size in Fig. 3, the warps (6) passing up and down through the stationary central warp 3, 890 and the upper shuttle *i* and filling forms a fabric on "one side of the warp 3, while the lower shuttle *h* and its filling forms a fabric on the under side." There is no pretence that the fabric when produced presents any new arrangement or combination of its component fibres, but only that, for the greater convenience in weaving, the centre warp is held stationary, whereas usually it is moved.

Whenever M'r Smith describes the fabric that he attempts to cover by a reissue, and swears that he invented it, we shall know how to dispose of M'r Smith; but if, by describing a machine for making these goods, and swearing he invented that, he can induce the office to grant him a patent for the goods which he does not swear he invented, it is a very safe operation for him.

The statement in the reissue is "that the object of the invention is to produce by weaving a fabric that has a centre warp enclosed on each side by weft threads held in place by interlaced warps."

That is, his object is to produce the ordinary corded goods by weaving; for there is no pretence that the goods here described are new. As a general statement this is well enough, and when followed by a description of the means whereby he effects that object, would lay a good foundation for such a claim as is in the reissued patent just surrendered; but it lays no foundation for claiming the goods. Blanchard's object was to "produce by turning gun stocks," and he patented his lathe and the way of working it; but he could not patent gun stocks because the object of his invention was to produce gun stocks; any more than Smith can patent this fabric because the object of his invention is to produce it.

It is suggested, however, by the examiner, that although a patent may not be granted for the fabric as claimed, yet it may be granted if the claim were amended so as to effect in some way the fabric produced with the fact that in producing it the centre warp was held still instead of being moved. Although perhaps it is enough to answer the

891 present proposed claim, and impossible to foresee, exactly, in what other form it may be proposed, yet there must be one characteristic of any possible claim founded upon the idea suggested which can be stated in general terms.

The supposed new claim must be in words or substance as follows, where the new idea is added to the present claim :

"I claim a fabric formed with centre warps enclosed by the weft threads that are held upon the surface of the centre warps by the interlocking of the middle warps between the centre warps, thereby causing the weft threads to be pressed tightly upon the centre warps or whenever in weaving such fabric the centre warps have been held stationary, but whenever they have not been held stationary, I do not claim the fabric."

As I understand the examiner's suggestion, he is of opinion that possibly this might be considered a new "fabric" because it was woven on a loom which held its centre warps stationary instead of being woven on a loom which worked the centre warp in the process of weaving, although when woven the fabric has the same combination of fibres as the old fabric had; and that a claim for the "fabric" which still includes in it the suggestion that the warp was held stationary in weaving will be allowed. And the reason why he thinks so is, that the fabric produced on Smith's loom, although not differently combined, is said in the patent to have but a "slight rib" formed on the surface "of the goods," whereas the fabric woven on the old loom, the patent says, "has ribs produced on its surface." As the patent states it, the difference is between a "rib" and a "slight rib," and upon this difference the patent is to stand if it stand at all.

In the first place there is no such difference in fact; although when called upon to define the difference between "a rib" and "a slight rib," perhaps it is not capable of a definition—seeing that we are confined to much less than the diameter of filling yarn in fixing one limit of a "slight rib" and dividing it from "a rib." The "rib" and the "slight rib," spoken of in the patent, are not the ribs which the
892 cords make in the transverse surface lines of the fabric, but they are "ribs" and "slight ribs" supposed to be made in the cords themselves, in the longitudinal surface lines; as the patent says, "caused by the India rubber, in raising or lowering, imbedding itself in the filling or warp, leaving the India rubber and its covering raised on each side;" that is to say, the India-rubber cords being raised above the level to allow the filling to pass below them, and being lowered below the level to allow the filling to pass above them, do not resume their original straight lines, but are bent up and down in a succession of "ribs" or "slight ribs," each of which is as long as the diameter of the filling yarn, and as high as the India rubber can be raised between two stands of filling, which, in the fabric, touch each other. If the India-rubber cords were slack in weaving and the filling threads wide apart, and drawn tightly across the fabric, such an effect might be produced with either loom; but, in fact, the India rubber threads are tightly drawn and stretched in weaving (otherwise the cloth would not be elastic, but would be limited in length by the non-elastic warps), and the filling threads are close together and slack, their tension being only such as the shuttle can give them, and the angle of elevation of the shed is so small that the amount of rise above a level of the warp in the thickness of one filling thread is only capable of being stated in infinitesimal quantities; and when the tight rubber can be taken down as far below the level as it was above it, it carries the filling with it, and is not

left either in a "rib" or a "slight rib," above the level; and the filling threads are beaten up by a "lathe" into contact with each other, and the opposite fillings balance each other, so that the tendency to a "rib" is neutralized.

The question of "ribs" or "slight ribs" is one of tension in weaving and not of arrangement of fibres, and no human being can tell by the test of "ribs" and "slight ribs" whether the fabric was woven on one or the other of the machines.

893 But if this were an advantage of Smith's loom it does not contribute a new fabric—it makes the loom more valuable, and so rewards the inventor, but it does not make a new fabric. It is a difference in the degree of perfection, not in the kind of fabric. Blanchard's process of turning made a much more perfect gun stock than could be made by all the former processes. It fitted the iron work better, and each was like all others, so that it was much more valuable when made, as well as cheaper to make; but for all that, it was only a gun stock, and not a new manufacture. Every improved process of weaving by machinery makes a better fabric than the inferior process did; but the better fabric is not a new fabric. Bigelow's carpet loom is patented, but not the carpet; but if Bigelow had invented a new combination of fibres to make a carpet, he could have patented it as a new "manufacture," but not in the same patent with his machine for making it.

The error, as I understand it, consists in endeavoring to make the motion of the warps in weaving become an element in the fabric when woven, and adhere to it forever. If the middle warps kept moving and the cord warps were still in the fabric, that would constitute a new fabric, but they were all stationary together in the fabric (except when the shoe is moving), and there is no trace of the process remaining.

Apply the test which the law applies to this patent if granted, and which would at once be applied in practice. These shoe gores (the goods that Smith is after) are now all imported from Europe, and the shoemakers buy these from the merchants. M'r Smith calls upon a shoemaker and demands five dollars for using his new fabric.

The shoemaker asks M'r Smith to point out the peculiarity of his fabric, so that he may know it, and not buy it again.

The reply is that it was woven on a loom which held the centre warp stationary, and the shoemaker must not buy the goods that such looms weave in England and France. But the shoemaker says he has no means of knowing that—the fabric is just such as he has been

894 using for twenty years; pick it apart and it is the old article, and how is he to know? There may be a dozen kinds of looms that will weave it as well as M'r Smith's loom—and certainly there are several kinds that will—and how can the shoemaker know? If the patent was for the fabric as proposed in the reissue as now written, that is for corded fabrics generally, of course there would be no difficulty, because upon inspection the goods answer the claim of the patent; but when the claim comes to be for the same goods only when woven on a machine similar to the one patented by Smith, then there is no way of identifying the goods except by tracing them up through the channels of trade to the factory in England or France, and finding out there whether they were made on the loom patented in England in 1849; if they are so they infringe Smith's patent; otherwise not.

It must be plain that a patent for a fabric, like a patent for a machine, must be a patent for some arrangement or combination which is inherent in the fabric itself, and can be seen on inspection of it, and cannot be a patent for an old fabric made cheaper, or with a "slight

rib" instead of a "rib," or more enduring, because less worn out in the process of weaving, or because of any other thing which does not affect the essential nature of the fabric, but only its greater or less degree of perfection.

Whenever these goods are made in this country on Smith's loom, he has the advantage of the patent.

But, in fact, none of the millions of these corded elastic goods, such as suspenders, garters, tapes, &c., made here are made on this loom, but all are made with movable cords, showing at once that the pretence of value in this loom is groundless. The trouble with M'r Smith is that the manufacturers of these goods in this country do not use his loom, although everything but shoe-gores is made here, and he therefore wants a patent for the goods made abroad (upon what loom we do not know) in order to levy a contribution on shoemakers, who may be found it cheaper to pay him ten or twenty dollars a year than to employ a lawyer to defend against unjust litigation. If it be true,
895 as Smith says, that the foreign goods are woven on a loom similar to his, then it his misfortune that an English inventor took the liberty of inventing and patenting this process in England about four years before his patent here, so that, even if he honestly invented it, and did not copy the English patent, he could not take a patent in England; and now, after eighteen years public use of these goods without question, Smith proposes to patent them by reissue, and levy a tax on the poor shoemaker who cannot afford to fight him in court.

Exd.—P. A. C.

Objections to the reissue of Division B of patent of William Smith, April 5th, 1853, once reissued June 18th, 1867.

BROWN & BEADLE.

OCTOBER 16, A. D. 1867.

Brown & Beadle, Solicitors of American and Foreign Patents, Washington, D. C.

896 OBJECTIONS TO REISSUE OF PATENT OF WILLIAM SMITH, DATED APRIL 5, 1853. BY BROWN & BEADLE, SOLICITORS.

897 In the Patent Office of the United States.

In the matter of the reissue of letters patent granted to William Smith April 5th, 1853, once reissued June, 1857, and now again to be reissued in three parts.

Objection to the reissue of Division B.

STATE OF THE CASE.

Long before the invention patented to William Smith, April 5th, 1853, a well-known fabric was made, called "corded goods," whose peculiarity is, that one "shed" of warps is composed of larger and different fibres or cords from the other sheds, and the "filling" is always passed from outside of those larger cord-warps, and is interlaced between them by the intermediate smaller warps. Either the same or different kinds of filling may be used for the opposite sides of the goods; but in either case the cord-warps are never exposed to view. Some of these goods have only one pair of warp threads to each cord, in which case the greater part of the surface appears corded; and some of them

have several warps between the cords, in which case the surface appears smooth for a greater part of its width than is made prominent by the cords. Some of these goods had the cord-warp of non-elastic fibres, and some of them of India-rubber thread, and the goods were
898 elastic or not accordingly. All these goods are perfectly described and comprehended in the claim which William Smith now proposes to take in a reissued patent, in these words: "A fabric formed with central warps, inclosed by the weft-threads that are held upon the surface of the centre-warps, by the interlocking of the middle warps between the centre warps, thereby causing the weft threads to be pressed lightly upon the centre warp." And such a claim as that would cover all these goods, which were known and used before William Smith was born.

On April 5th, 1853, William Smith took a patent for a process of weaving these goods, which depended for novelty upon the manner in which the loom was operated. The patent comes under the statutory division of "an improvement on a machine"; and the word process is used to explain that improvement. In 1849—four years earlier—the same improvement was patented in England, where it is now public property, and where Smith alleges it is now used in weaving "shoegoring." In 1867, Smith extended his patent, by swearing back the date of his invention before that of the English patent; and in June, 1867, he reissued the patent, with a somewhat different claim from the original one, but still with a claim only for the process he invented. He now applies for another reissue in three parts—one for the process, one for some trifling detail of the loom, and one for corded fabrics generally, in the language quoted above.

The reason of this attempt is, that Smith undertook to levy a contribution upon about fifty shoemakers and others who were using English shoe-gores, which he alleges were woven on the English machine similar to his, and patented in England in 1849; and he actually commenced about fifty suits against these people for injunctions; but when he found that, instead of paying the few dollars or cents which he demanded, as some did, the majority refused, and filed demurrers, on the ground that the inventor of one sort of a loom for making an old fabric cannot patent the particular pieces of that fabric made on his
899 new loom, he abandoned his suits, without waiting for a decision against him, thereby acknowledging that he knew his claim was false, which he had sworn to be good in fifty bills in chancery; and now he comes into this office and swears that his patent is inoperative and invalid, and endeavors to add to it, by reissue, a new patent for the fabric, which he pretended was included in the patent on which he sued, until he was challenged to show it in court, when he abandoned the pretense.

The patent of 1853 contains all that is necessary to know in order to refute this pretension. He thus states the invention: "The object of my invention is to furnish means for weaving fabrics formed by a centre warp of India rubber for corrugated elastic goods, or any similar warp which is inclosed by a fabric formed on each side of it, by filling from two shuttles, one passing above and the other below the centre warp, which is stationary, the sheds being formed by upper and lower warps worked in any usual manner."

In that patent, M'r Smith describes very distinctly the thing he invented, and the reason why it is an improvement. He says that, in the old process of weaving these goods, the cord-warps were raised and lowered by the "heddle" in the same way that the middle warps were,

from which three evils resulted, according to M'r Smith: first, the goods were not so smooth when woven; second, the cord-warps, being raised by the heddles, were subjected to more friction than if left stationary, and therefore were more liable to break in weaving; and thirdly, only one shuttle could pass at a time when the cord-warps were raised and lowered—whereas, if stationary in the centre, and the middle sheds were separated above and below, two shuttles could pass simultaneously, "requiring but half the time, thereby producing a corresponding saving of cost."

The advantages of the machine, as stated in the patent, are: 1st, That the corded fabric on the old loom "has ribs produced on its surface, caused by the India rubber, in raising and lowering, imbedding itself in the filling"; whereas, by the use of the new process, "but a slight rib is formed on the surface of the goods"; and 2d, that it is a cheaper way of weaving; because the warps don't break as often, and it
900 weaves twice as fast. And the reason why these advantages result is the one single idea patented, namely, that in weaving, the cord-warp is held stationary in the loom. In other respects it is the old operation.

ARGUMENT.

No reissue of the sort proposed can be legally granted to William Smith—

1st. Because he is not the inventor of the "fabric" which he proposes to patent; and,

2d. Because, if he were, it cannot be patented on the papers and model to which he is confined on a reissue.

First. He is not the inventor of the fabric or "manufacture" which he proposes to patent. A textile fabric is known by the arrangement of the fibres which compose it, and a new fabric must show a substantially new arrangement or combination of fibres. In order to found a patent on a new fabric, it is immaterial by what machine it is made. The inventor of plain cloth could patent a "fabric" composed of fibres laid at right angles to each other, and alternately crossing above and below each other," although made by hand; and the inventor of a loom for weaving that fabric would be subject to the prior patent for the fabric itself, and could not have another patent for the fabric because it was made on his loom instead of by hand. His loom could be patented, and he would have all the advantages that it possessed over the old method in cheapness and better finish, but that is all. Before the Jacquard loom was invented, a fabric was woven by the "draw-boy" process similar to that which the Jacquard produces, but not so smooth or perfect, because the heddles and warps were lifted my hand instead of by machinery; but certainly the inventor of the Jacquard loom could not claim as a new "fabric" the pictured goods made by his loom. The case is precisely similar to this one, and the advantages of the Jacquard precisely what the patent claims, namely, more perfect finish and cheaper weaving. The fabric for which Smith now claims a patent is made with a series of warps, of which one out of every certain number
901 is a cord or large warp, and which is always covered by the filling on both sides. In the simplest form of it, a section is shown in this sketch.

Fig. 1 represents a section through the cloth, showing a filling of red on one side and blue on the other, and two middle warp threads; but any number may be used. This is the simplest form. Fig. 2 represents a top view of the goods, and Fig. 3 a section lengthwise through one of the middle warp threads. This is the fabric that would be produced by the loom of Smith, so far as the patent indicates; but no description of that fabric is given in the patent, and the fig. 3 of the patent does not show how the fabric would appear if cut crosswise. This is an old, well-known fabric, and neither the original nor reissued patent avers it to be new, or describes it at all; but, on the contrary, speaks of the fabric as old, and describes how it was usually woven, that is, by moving the cord-warps as well as the middle ones.

It is evident, therefore, upon the face of the papers, that Smith is not the inventor of the fabric, and does not claim to be in the patent.

902 He now proposes to have a claim added which would give him these goods; but he does not say he invented them.

Second. If he were the inventor, he could not patent it by way of reissue on the papers now before the office. A patent can only be granted in law for one of four things—"an art, machine, manufacture, or composition of matter," or for an improvement on one of these. A new fabric is a "manufacture," and cannot be patented in the same patent with a "machine" or a "composition of matter." The inventor of a shoe-last, and of a machine for turning shoe-lasts, cannot patent both in the same patent. They are different subjects. A grist-mill for grinding flour cannot be patented in the same patent with what it grinds, even if that be of a new kind; because one is a "machine" and the other a "composition of matter." They are different subjects.

And if an original patent cannot be taken for the different subjects (for patent medicine and a wheelbarrow to peddle it on, to use M'r Justice Grier's illustration in a similar case), it follows that a patent cannot be reissued for two different subjects. In this case, the original patent is for an "improvement on a machine" for weaving, and a reissue is attempted in two parts—one for that improvement and one for a fabric which may be woven on that machine or upon some other.

But, if it were lawful to reissue such a patent under any circum-

stances, it cannot be done in this case, because the thing claimed is a "manufacture," and there is no description of the manufacture given in the original application or in the reissue, by which the public would be able to know it when presented, nor was there a sample filed with the original application. If this were a new "manufacture," the law requires that it should be described and distinguished from what was known before, and a specimen of it must be filed, and the inventor must swear that he believes himself to be the inventor of the new manufacture. None of these things is done. On the contrary, the fabric produced is referred to in the patents frequently as made by other
903 processes, and the only attempt is to show how the new loom or process will make that fabric cheaper or better—not how it will make a differently combined fabric. The only specific reference in the patent to the fabric is to show how the new loom operates, and is in these words:

"The two shuttles carry bobbins, with filling as usual, and the loom in working forms a fabric, as shown in larger size in Fig. 3, the warp 6 passing up and down through the stationary centre warp 3. The filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the under side; thus the warp 3 is inclosed."

Whenever William Smith describes the fabric which his proposed claim covers, and swears that he invented that, we shall know how to dispose of William Smith; but if, by describing a new loom or process for weaving a fabric, and swearing that he invented that, he can induce the Patent Office to grant him a title to the exclusive use and sale of the fabric produced, which he does not describe or swear that he invented, the operation is a very safe one for him.

The statement in the reissue now proposed is, that "the object of this invention is to produce, by weaving, a fabric that has a centre warp inclosed on each side of weft threads, held in place by interlaced warps"; that is, the object is to produce just such goods as all the double-shuttle looms (or single shuttle, when passed alternately above and below the warps to be covered) will produce. There can be no pretense that such a fabric is new, or that it is new to "produce it by weaving." It may be new to produce it by a new process of weaving; and the general declaration above quoted, when followed by a description of the new process or machine, would lay a good foundation for a patent for that new process, but surely not for a patent for the fabric.

It is suggested, however, by the examiner, that although a patent may not be granted for the fabric as now claimed, yet it might be granted if the claim were amended so as to affect, in some way, the fabric pro-
duced, with the fact that in producing it the centre warp was
904 held still instead of being moved. Although, perhaps, it is enough to answer the present proposed claim, and impossible to foresee exactly in what other form it may be proposed, yet there must be one characteristic of any possible claim founded upon the idea suggested, which can be stated in general terms. The supposed new claim must be, either in words or in substance, as follows:

"I claim a fabric formed with centre warps inclosed by the weft threads, that are held upon the surface of the centre warps by the interlocking of the middle warps between the centre warps, thereby causing the weft threads to be pressed tightly upon the centre warps"—whenever, in weaving such fabric, the centre warps have been held stationary; but, whenever they have not been held stationary, I do not claim the fabric.

As I understand the examiner's suggestion, he is of opinion that possibly this might be considered a new fabric, because it was woven on a loom which held its centre warps stationary instead of being woven on a loom which moved the centre warp in the process of weaving, although when woven the fabric has the same exact combination of its fibres as the old fabric had; and that a claim for the fabric, which will include in it the suggestion that the warp was held stationary in weaving, will be allowed. And the reason why he thinks so is, that the fabric produced on the Smith loom, although not differently combined, is said in the patent to have "but a slight rib formed on the surface of the goods," whereas the fabric woven on the old loom, the patent says, "has ribs produced on its surface." As the patent states it, the difference is between a "rib" and a "slight rib"; and upon this difference the patent is to stand, if it stand at all.

In the first place, there is no such difference in fact; although, when called upon to define the distinction between a rib and a slight rib, perhaps it is not capable of a definition, seeing that we are confined to much less than the diameter of filling yarn in fixing the limit of a slight rib and distinguishing it from a rib.

905 The rib and the slight rib spoken of in the patent are not the ribs which the cords make in the transverse surface lines of the fabric, but they are "ribs" and "slight ribs," supposed to be made on the cords themselves in the longitudinal surface lines, as the patent says, "caused by the India rubber, in raising and lowering, imbedding itself in the filling or woof, leaving the India rubber and its covering raised on each side;" that is to say, the India rubber cords being raised above the level to allow the filling to pass below them, and being lowered below the level to allow the filling to pass above them, do not resume their original straight lines, but are bent up and down in a succession of "ribs" or "slight ribs," each of which is as long as the diameter of the filling yarn, and as high as the India rubber can be raised between two strands of filling, which in the fabric touch each other.

If the India rubber cords were slack in weaving, and the filling threads were wide apart and tightly drawn across the fabric, such an effect might be produced on either loom; but, in fact, the India rubber threads are tightly drawn and stretched in weaving (otherwise the cloth would not be elastic, but would be limited in length by the non-elastic warps), and the filling threads are close together and slack, their tension being only such as the shuttle can give them; and the angle of the elevation of the shed is so small that the amount of rise above the level of the warp, in the thickness of one filling thread, is only capable of being stated in infinitesimal quantities; and when the tight rubber cord is taken down as far below the level as it was above it, it carries the filling with it, and is not left either in a "rib" or a "slight rib" above the level. And the filling threads are beaten up by a lathe into contact with each other, and the opposite fillings balance other *other*, and the tendency to a rib is neutralized.

The supposed effect of this evil in the old loom is to imbed the filling in the India-rubber warp, and to do it so effectually as to distort the warp into "ribs." If that was so, it is evident that the India-

906 rubber warp must be tightly held by and between each pair of filling threads; and yet, now, in order to help a reissue, Smith puts into his description what was not in the original patent, in these words:

"The rubber is held tightly, and is not liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber."

In the original patent, he claims as a merit that the rubber was not held tightly by the warp threads, and so was smoother when woven. He now adds to his patent a pretense that by his process the India-rubber is held tightly. Both pretenses are false; but they are inconsistent with each other, and are mere pretenses. In both methods, the filling is held as tightly to the warps as the shuttle tension requires, and that is within the same degree of regulation in both cases alike. The whole thing is a mere question of shuttle tension, and no human being can tell by the test of "ribs" or "slight ribs" upon which loom the goods are woven.

But, if this were an advantage of Smith's loom, it does not constitute a new fabric. It makes the loom more valuable, and so rewards the inventor; but it does not make a new fabric. It is a difference in the degree of perfection, not in the kind of fabric.

Blanchard's process of turning made a much more perfect gun-stock than could be made by all the former processes. It fitted the iron-work better, and each was like all others, so that they were much more valuable when made as well as cheaper to make; but, for all that, it was only a gun-stock, and not a new manufacture.

Every improvement in the process of weaving makes a better fabric; but a better fabric is not a new fabric. If some one should find out and patent weaving broadcloth by holding alternately one of the warps stationary while only one was moved, however great the advantage might be in finish or price, it would not constitute the fabric a new manufacture; the process could be patented, but not the goods.

907 The error, as we understand it, consists in endeavoring to make the motion of the warps in weaving become an element in the fabric when woven and adhere to it forever. If the middle warps kept moving and the cord warps kept still in the fabric, that would constitute a new fabric; but they are all stationary together in the fabric (except when the shoe is moving), and there is no trace of the process remaining.

Apply the test which the law applies to this patent, if granted, and which would at once be applied in practice. These shoe-gores, which are the goods that Smith is after, are now generally imported from Europe, and the shoemakers now buy them from the merchants. M'r Smith calls upon a shoemaker and demands five dollars for using his new fabric. The shoemaker asks M'r Smith to point out the peculiarity of his fabric, so that he may know it, and not buy it again. The reply is, that it was woven on a loom which held the centre warp stationary, and the shoemaker must not buy the goods that such looms weave in England and France. But the shoemaker says he has no means of knowing that; the fabric is just such as he has been using for twenty years; pick it apart, and it is the old article, and how is he to know? There may be a dozen kinds of looms that will weave it as well as M'r Smith's loom—and certainly there are several kinds that will—and how can the shoemaker know? If the patent was for the fabric, as proposed in the reissue as now written (that is, for corded fabrics generally), of course there would be no difficulty, because upon inspection the goods answer the claims of the patent; but when the claim comes to be for the same goods only, when woven on a machine similar to the one patented by Smith, then there is no way of identifying the goods except by tracing them up through the channels of trade to the factory in England or France, and finding out there whether they were made on the loom patented in England in 1849. If so, they infringe Smith's patent, otherwise not.

907½ It must be plain that a patent for a fabric, like a patent for a machine, must be a patent for some arrangement or combination which is inherent in the fabric itself, and can be seen on inspection of it; and that it cannot be a patent for an old fabric made cheaper, or with a slight rib instead of a rib, or more enduring because less worn-out in the process of weaving, or because of any other thing which does not affect the essential nature of the fabric, but only its greater or less degree of perfection.

Wherever the goods are made in this country on M'r Smith's loom, he has the advantage of the patent; but, in fact, none of the millions of these corded elastic goods, such as suspenders, garters, tapes, etc., etc., made here, are woven on the loom; but all are made on looms with movable warps, showing at once that the pretense of value in this loom is groundless. The trouble with M'r Smith is, that the manufacturers of these goods in this country do not use his loom, although everything but shoe gores is made here; and he therefore wants a patent for the goods made abroad (upon what looms we don't know), in order to levy a contribution on shoemakers, who might find it cheaper to pay ten or twenty dollars a year than employ a lawyer to defend against unjust litigation.

If it be true, as Smith says, that the foreign goods are woven on a loom similar to his, then it is his misfortune that an English inventor took the liberty of inventing and patenting this process in England about four years before his patent here; so that, if he honestly invented it, and did not copy the English patent, he could not take a patent in England. And now, after eighteen years' public use of these goods without question, Smith proposes to patent them by reissue, and levy a tax on the poor shoemakers who cannot afford to fight him in court.

BROWN & BEADLE,
Solicitors.

908 *Examiner's report on William Smith's application for extension of his patent of April 5, 1853.—Filed March 6, 1867.*

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof, I, A. M. Stout, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereto affixed this fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States the ninety-first.

[SEAL.]

A. M. STOUT,
Acting Commissioner.

909

U. S. PATENT OEFICE,
March 6th, 1867.

In the matter of the application by William Smith for an extension of his patent No. 9653, dated April 5, 1853, for an improvement in weaving corded fabrics.

In the above case I have the honor to make the following report:

The invention covered by this patent is clearly expressed in the claim

to be "the process of forming a fabric by the combination of stationary and movable warps, with two weft-threads passed simultaneously through the two sheds, formed above and below said stationary warps; the weft-threads being held in place on the surface of the stationary warps by the movable warps; the weft-threads being held in place on the surface of the stationary warps by the 'moveable warps.'"

The main object was to make an elastic webbing suitable for gores for Congress shoes, suspender webbing, &c., the stationary warps being the rubber or elastic ones; but the stationary warps might be of ordinary threads.

The words "stationary" is used to signify that the threads do not rise and fall like the movable ones, in order to form a shed for the shuttle to pass.

NOVELTY.

Fabrics had been woven prior to this invention, in which two shuttles were used, but in which the rubber threads rose and fell, one shuttle passing through the shed when the rubber threads were lifted, and the other passing through when they were depressed; but I find no instance in which the rubber threads were not lifted and lowered, and in which both shuttles passed simultaneously, thus affording a means for making a more perfect goods, with the opposite surfaces, if desired, of
910 different material, and with much less liability of giving a ribbed surface to the fabric, than in the cases where the rubber threads, from the fact of being lifted and depressed, became more or less imbedded in the filling or woof, the rubber being somewhat raised on each side.

A careful review of the state of the art up to the period of the grant to this applicant, satisfies me that the invention was then new.

The testimony in the case, derived from manufacturers, importers, and dealers in elastic fabrics, having an experience of from ten to thirteen years, is uniform as to their never having become possessed of any information tending to impair their belief in its novelty.

UTILITY.

This invention appearing about at the period when elastic webbing of various kinds was being introduced to a considerable extent in the shoe and other manufactures, and in which it was desirable to have a fabric in which one side should be of fine material, such as silk, and the other side of a cheaper or stronger material, and the whole present a handsome exterior, whilst the rubber threads should be as much as possible concealed, it had undoubtedly much utility then, and the subsequent extensive use of such fabrics is notorious.

The testimony adduced, if any doubt existed upon this point, amply attests the utility of this invention, and in this connection I would therefore direct your honor's attention to the affidavits at large.

VALUE AND IMPORTANCE TO THE PUBLIC.

The witnesses to this point are men of long and large experience in the kinds of business in which the peculiar fabric under consideration is sold and used.

They, with singular unanimity, concur substantially in the following: That of elastic webbing, about 10,000,000 or more yards have been

911 sold in this country during the life of this patent, besides a very great amount of suspender and garter webbing, and at profits between the manufacturing and selling prices of from ten cents to fifty cents per yard.

That the Elastic Fabrics Company (Goodyear) exact from all licences under them a licence-fee of from ten cents to twenty five cents per yard, for stamping goods woven according to the plan of Smith's patent.

The treasurer of said company (see informally certified copy of evidence before referee) testifies that some 1,300 of such licences were issued; and he, as well as witness Elms, testifies that said company guaranteed to hold the buyers and licensees harmless against any infringement of said W'm Smith's patent.

Elms also states (and his evidence is corroborated by Joseph Dix; see above-stated certified copy), that his and other firms negotiated to buy the patent for $25,000, and to pay three cents a yard for all goods manufactured; but that from the improper action of others, as hereinafter stated, Smith could not give them a sufficent title.

Elms and others estimated the invention as worth to the country $1,500,000. Nichols puts it $1,000,000. All agree that its value is very great.

ADEQUACY OF REMUNERATION.

The whole tenor of the evidence shows that the inventor has had but a mere pittance in return for his invention. Elms, Winslow, Nichols, Perkins, Frazier, Bubier, and Newhall state that for ten years at least the inventor has, without fault or neglect upon his part, but by the improper action of others, been cut off from al' source of profit from said invention. They all appear to have known him, and to have been cognizant of his efforts during this period, and some of them for a larger period.

This failure of remuneration appears to have been due the causes which, in his statement and affidavit, he assigns for it, to wit, his
912 lack of means, commencing his experiments with a borrowed capital of 75 c'ts; the death of the solicitor who had his application in charge; many delays and bad work by others in building his machines; opposition in the market by large manufacturers and infringers, and their efforts to stop the sale of his goods and damage their reputation; the early difficulties in procuring vulcanized rubber threads and then only in small quantities and from abroad, and the consequent necessity and expense and delay of his inventing machinery for cutting threads from rubber; subsequent pecuniary embarrassment, mortgaging of his machinery, distress for rent, &c., &c., ending in his flying for relief to the formation of a stock corporation called the Silk Manufacturing Company, to which, for $3,000 cash and $3,000 stock, he assigned his patent and machinery. This money went to pay his debts, leaving him but $500, and the stock proved worthless to him. Proceeding to Paterson, N. J., to prepare for manufacturing, a year passes away before he commenced; the goods which he now consigned to his associates in N. Y. he finds they make no effort to sell; and after remonstrating and insisting upon their sale as they are accumulating, they promising and disregarding their promises, he arranges with prominent wholesale houses of N. Y. city to use the goods and act as agents for their sale; this arrangement his associates appear to approve, and some time after his return to Paterson, he learns that they have not so disposed of any of the goods. They de-

cline to put the goods in the market, and insist that he must attend to his own department and make the goods and machinery perfect, and they would attend to the financial part. Then commences his litigation which has continued against them and others until the present time. Since that period he does not appear to have had any control of his patent, and has been in a position antagonistic to his associates and large capitalists whose interests seem to have been adverse to any recognition of his rights, whatever those may have been during this period.

913 Most of the witnesses testify to his difficulties with his associates and the fact of his being in litigation in regard to his patent, and that this was necessary and unavoidable, and as affording the only prospect of recovering his rights and making profit by his invention.

His account, to which I would refer, is quite brief, and without making any charge whatever for his time and services, it shows as—

Cash receipts	$22,340 76
" expenses	20,489 76
	$1,851 00

He remarks that if the time he has spent in the matter be taken into account, he is more than $10,000 out of pocket.

In the evidence heretofore referred to as taken before the referee, M'r Lovering, the treasurer of the Goodyear Company, states that Smith claimed from them on his patent, but as their counsel reported that he had no title, but that others had, the company paid a sum of money (unknown to him) for a transfer of their rights, and said rights were transferred. He also states that he received several communications from Smith, but did not answer them, and that the company received royalties on goods to be made under Smith's patent.

DILIGENCE.

The foregoing embodies most of the testimony upon the question of diligence of the inventor, and to which all of the deponents bear favorable testimony. Perkins states that Smith devoted most of his working time, and availed of all reasonable and lawful means of making profit from his invention.

Deponent Winslow says that he was and is a manufacturer of Congress boots, and was agent for Horace H. Day for the Eastern States, and was in conflict with the goods made by Smith's patent, and knows of the struggles and difficulties experienced by Smith in 1854, 1855 and 1856, and believes that the assignment made by him to the Silk

914 Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit; and, further, that the company tried to manage its affairs so that Smith should have no profit.

I do not find on file any opposition to the extension.

A certified copy instead of the original patent is filed, the absence of which is explained by an affidavit of applicant appended to the copy, the parties connected with the Silk Manufacturing Company, to whom it was furnished in 1856, having failed to deliver it to him in response

to efforts to obtain the same; and he states that he is unable to produce the same, and it may have been destroyed.

All of which is most respectfully submitted.

JOHN J. HALSTED,
Examiner.

Hon. T. C. THEAKER,
Comm'r of Patents.

In the matter of extension of letters patent, granted April 5, 1853, to William Smith, for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
In the County of Suffolk and State of Massachusetts, ss:

NATHAN NICHOLS, being duly affirmed, says that he is a merchant of the above city, and has been such for many years now past, and is and has been an importer and dealer in foreign and domestic elastic webbing for the manufacture of Congress boots, and is well able to
915 judge of the use and consumption of such goods for the last ten years, and has known and been acquainted with William Smith for ten years.

That he knows of the early efforts made by him to introduce the improvement in question, and he believes that he has exercised reasonable diligence and devoted almost the whole of his time to the same, and availed himself of all reasonable and lawful means for making profit by said invention.

That he knows generally the circumstances surrounding said Smith in the early efforts of Smith to introduce said invention into the market; and believes the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation, that it would be for his pecuniary benefit in connection with the patent.

That deponent is knowing generally to the efforts of the Silk Manufacturing Company and the Elastic Fabrics Company to deprive said Smith of any profits from said invention.

That deponent believes that the prolonged litigation which has resulted in connection with the invention and letters patent has been unavoidable, and the said Smith has been justifiable and necessitated to pursue the same as his only prospect of recovering his rights and making profit by said invention.

That deponent believes the said Smith has not been adequately remunerated for the time, ingenuity, and expense for devising and developing said invention.

That deponent verily believes that said Smith, without neglect or fault on his own part, has, by the improper action of others, been cut off from all sources of profit from said invention for ten years at least of the term of his patent.

That deponent verily believes that the value and importance of the said invention to the public to be very great; that deponent estimates the value at about one and a half million dollars.

916 That deponent is generally knowing to the fact that elastic webbing made pursuant to said patent has been sold very extensively; that from facts within the sphere of deponent's observation, he should estimate that there had been upwards of ten millions of yards sold or used during the term of said patent.

That deponent estimates the number of yards of shoe webbing used

in the Eastern States at 750,000 yards yearly, and a low estimate at that; and deponent believes, so far as he can candidly judge, that the number of yards of shoe webbing sold or used in the United States during the last thirteen years at eleven million of yards.

That deponent cannot give an estimate of the number of yards of suspender webbing and elastic garters, &c., made according to said patent, deponent not dealing in such articles, but should suppose them to be very great.

That deponent verily believes that on the better quality of said fabrics a profit of fifty cents per yard was made between the cost price and the price to consumers, and that the profits ranged from that sum down to ten cents per yard.

The deponent is aware that the Elastic Fabrics Company, under the Goodyear patent, charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics, woven according to the plan of the said Smith's patent, and that the manufacturers' and sellers' profits, of course, were additional.

That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for infringing said Smith's patent in using and selling said goods, to hold them harmless from any claim under the patent in question; and that this deponent has paid said company very large sums of money under said guarantee.

That deponent has never become possessed of any information tending to impair the novelty of the invention of the said Smith, but, on the contrary, he believes that a standing warp, on each side of which a fabric was woven, was new when invented by said Smith.

917 That deponent believes that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention and introduction thereof into use, and he believes that he is in justice entitled to an extension of the said letters patent for the term of seven years, according to law.

NATHAN NICHOLS.

Subscribed and duly affirmed before me this 21st day of December, 1866.

JAMES J. CURTIS,
Notary Public.

[5 c'trev. stamp.]

In the matter of extension of letters patent, granted April 5, 1853, to William Smith, for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
County of Suffolk and State of Massachusetts, ss:

WILLIAM R. PERKINS, being duly sworn, says that he is a dealer and importer of elastic webbing used in the manufacture of Congress boots; and has known said Smith and been acquainted with him these last thirteen years; that deponent was formerly manufacturer of fine Congress boots, and used webbing made by said Smith under his patent in the years 1853 and 1854; that said webbing was good and durable, not quite so fine as what is made now, but more durable than any I have seen since.

That he knows the early efforts made by him to introduce the improvement in question, and he believes and knows that he exer-

918 cised reasonable diligence, and devoted almost his working time

to the same, and availed himself of all reasonable and lawful means of making profit by the said invention.

That he knows generally of the circumstances surrounding the said Smith during the years of 1853 and 1854, 1855, to the spring of 1856, and believes that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with said patent.

That deponent is generally knowing of the efforts of the Silk Manufacturing Company so to manage their affairs that there should not be any profit resulting to said Smith.

That deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and the said Smith has been justified and necessitated to pursue the same as the only prospect of recovering his rights and making profit by the said invention.

That deponent believes that the said Smith has not been adequately remunerated for the time, ingenuity and expense of devising and development of said invention.

That this deponent verily believes that said Smith, without neglect or fault of his own part, has, by the improper acts of others, been cut off from all sources of profit from said invention for the term of ten years at least of his invention.

That deponent verily believes that the value and importance of said invention to the public to be very great; that the deponent estimates the value of the patent in the market at one million dollars, and cheap at that.

That deponent is generally knowing to the fact that elastic webbing, made pursuant to said patent, has been sold very extensively; and from facts w'bin the sphere of deponent's observation, he should estimate that there had been million of yards sold or used in the United States during the term of said patent.

That deponent estimates that the number of yards of suspender
919 webbing and garter webbing, made according to said patent, to have been very great, but not being a dealer in such articles can not so confidently make any accurate statement about the quantity.

That deponent estimates the number of yards of shoe webbing sold or used in the United States during the last thirteen years at million of yards.

That deponent verily believes that on the better qualities of said fabrics a profit of fifty cents per yard was made between the cost price and the price to consumers, and that the prices ranged from that down to ten cents per yard.

That deponent is aware that the Elastic Fabric Company, under the Goodyear patent, charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics woven according to the plan of the said Smith's patent, and that the manufacturers' and sellers' profit was additional.

That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for infringing the patent of said Smith to hold them harmless from any claims under the patent in question.

That deponent has never become possessed of any information to impair the novelty of the invention of the said Smith, but on the contrary, he believes that a standing warp on each side of which a fabric is woven was new when invented by said Smith.

That deponent believes that said Smith has not been adequately re-

munerated for the ingenuity and expense bestowed upon the said invention, and the introduction thereof into use, and he believes that he is in justice entitled to an extension of the said patent for the term of seven years, according to law.

WILLIAM R. PERKINS.

Sworn before me this 21st of December, 1866.

JAMES J. CURTIS,
Notary Public.

[5 c't rev. stamp.]

920 In the matter of extension of letters patent, granted April 5, 1853, to William Smith, for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
County of Suffolk and State of Massachusetts, ss:

JAMES C. ELMS, being duly sworn, says that he is a dealer and importer of elastic webbing, shoe findings, &c., in the city of Boston, and that he knows and has been acquainted with the above named William Smith for the last ten years.

That he knows of the early efforts made by said Smith to introduce in the market the improvement in question, and he believes that he exercised reasonable diligence, devoted almost all of his working time to the same, and availed himself of all reasonable and lawful means for making profit by said improvement.

That he knows generally from information and belief, and public documents, the difficulties that attended said Smith in the early part of his operations under his patent, and from information and belief, that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with his patent.

That from information and belief he is generally knowing to the efforts of the Silk Manufacturing Company so to manage their affairs that there should not be any profit resulting to the said Smith.

That deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent, has been unavoidable, and the said Smith has been justified and necessitated to pursue the same as his only prospect for recovering his rights and making profit by the said invention.

921 And this deponent further says that said Smith, without neglect or fault of his part, has, by the improper actions of others, been cut off from all sources of profit from said invention for ten years at least of the term of his patent.

That deponent verily believes the value and importance of the said invention to the public to be very great; that deponent estimates the same at one and a half million of dollars.

That deponent is knowing to the fact that elastic webbing, made pursuant to said patent, has been sold very extensively; that from facts within the sphere of deponent's observation he should estimate there had been ten millions of yards sold or used during the term of said patent in the United States, and probably much more.

This deponent has no accurate knowledge of the number of yards of

suspender webbing, garter webbing, elastics, &c., made according to said patent, but believes it to be very great.

That deponent verily believes that in the better qualities of said fabrics, a profit of fifty cents per yard was made between the cost price and the price to consumers, and that the profits ranged down to ten cents per yard.

That deponent is aware that the Elastic Fabrics Company, under Goodyear's patent, charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics woven according to the plan of Smith's patent, and that the manufacturers' and sellers' profit of course was additional.

That deponent was aware that the said Elastic Fabrics Company issued many hundred guarantees to different persons and firms for infringing "William Smith's patent" to hold them harmless from any claim under the patent in question.

That deponent never became possessed of any information to impair the novelty of the invention of said Smith, but, on the contrary, he believes that a standing warp, on each side of which a fabric is woven, was new when invented by said Smith.

922 That this deponent further says that in the early part of 1862 negotiations were entered into to purchase said patent by the following firms of this city: Boyce & Nichols, Joseph Dix & Co., Faxon & Elms (of which this deponent is one), on the following conditions: Twenty-five thousand dollars in cash, and three cents a yard royalty on all goods made or sold; but through the improper action of others Smith could not give a clear title to the same, and that was the only reason why the matter was not consummated.

That deponent believes that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention, and the introduction thereof into use, and he believes that he is in justice entitled to an extension of the said letters patent for the term of seven years, according to law so provided.

JAMES C. ELMS.

Sworn before me this 22d of December, 1866.

JAMES J. CURTIS,
Notary Public.

[5-ct. rev. stamp.]

In the matter of extension of letters patent, granted April 5, 1853, to William Smith, for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
In the County of Suffolk and State of Massachusetts, ss:

CHARLES WINSLOW, being duly sworn, says that he knows the abovenamed William Smith, and has been acquain'ed with him for twelve years or more.

923 That he knows the early efforts made by him to introduce the improvement in question, and he believes and knows that he exercised reasonable diligence, and devoted almost all of his working time to the same, and availed himself of all reasonable and lawful means of making profit by the said invention.

That he was a manufacturer of Congress boots, and so still continues, and was agent for Horace H. Day for the Eastern States, and was in

conflict with the goods made by Smith's patent, and knows of the struggles and difficulties experienced by Smith in the years of 1854, 1855, 1856, and believes that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with said patent.

That deponent is generally knowing to the effort of the majority of said company so to manage their affairs that there should not be any profit to said Smith.

That deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and that the said Smith has been justified and necessitated to pursue the same, as the only prospect for recovering his rights and making profit by said invention.

That deponent believes that said Smith has not been adequately remunerated for the time, ingenuity, and expense of devising and developing the said invention.

That this deponent believes that said Smith, without neglect or fault of his own part, has by the improper actions of others been cut off from all sources of profit from said invention for ten years at least of the term of his patent.

That deponent verily believes that the value and importance of the said invention to the public is very great; that deponent knows that great quantities of goods made by said invention have been sold in the market, but what the amount might foot up this deponent has no means of knowing.

That deponent is aware that the Elastic Fabrics Company
924 charged parties a license fee, ranging from twenty-five cents per yard down to ten cents per yard, for stamping elastic fabrics, made and woven according to the plan of the said Smith's patent.

That deponent is aware that the said Elastic Fabrics Company issued guarantees to persons using goods made by said patent in question, and for infringing "Smith's patent," and deponent never heard of anything to impair the novelty of said invention made by Smith, but knows the same to be useful and beneficial to the public, and believes he is entitled to seven years' extension according to law.

CHARLES WINSLOW.

Sworn before me this 19th of December, 1866.

JAMES J. CURTIS,
Notary Public.

[5-:t. rev. stamp.]

In the matter of extension of letters patent granted to William Smith, granted April 5, 1853, for improvements for weaving corded fabrics.

Hearing before Commissioner of Patents, March, 1867.

LYNN,
In the County of Essex and State of Massachusetts, ss:

We, the undersigned boot and shoe manufacturers of Lynn, aforesaid, E. T. Bubier, L. B. Frazier, Isaac Newhall, being duly sworn, say that they know the above-named William Smith, and have been acquainted with him for many years.

That they know of the early efforts made by him to introduce the improvement in question, and believes that he exercised reasonable diligence, devoted most of his time to the same, and availed himself of all

reasonable and lawful means for making profit by said invention.

925 That deponents are generally knowing that the Silk Manufacturing Company and the Elastic Fabrics Company so manage their affairs that there should not be any profit resulting to said Smith.

That deponents believe that the prolonged litigation which has resulted in connection with this invention has been unavoidable, and the said Smith has been justified and necessitated to pursue this course as his only remedy or prospect for recovering his rights and making profit by said invention.

That deponents believe that the said Smith has not been adequately remunerated for the time, ingenuity, and expense of devising and the development of the said invention.

And deponents verily believe that said Smith, without neglect or fault of his own, by the improper action of others, has been cut off from all sources of profit from said invention for ten years at least of the term of his patent.

That deponents verily believe the value and importance of the said invention to the public has been very great; that deponents estimate the same at one and a half millions of dollars.

That deponents well know the fact that elastic webbing made pursuant to said patent has been used very extensively; from facts within the sphere of deponents' observation they should estimate that there had been ten millions of yards sold or used in the United States of America during the term of said patent.

The deponents cannot estimate what number of yards of suspender webbing, elastic garter webbing, made according to said patent, but they believe the quantity to be very great.

That deponents verily believe that on the better qualities of fabrics a profit of fifty cents a yard was made between the cost price and the price to the consumers, and the profits ranged from that same down to ten cents per yard.

926 That deponents have full and accurate knowledge that the Elastic Fabrics Company charged parties a license fee, ranging from twenty-five cents per yard down to ten cents per yard, for stamping elastic fabrics woven according to the plan of the said Smith's patent, and that the manufacturers' and sellers' profit of course was additional.

That deponents are aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for selling and using said elastic fabrics to hold them harmless for infringing "William Smith's patent," and from any claim under the patent in question, and that great and vast sums of money have been paid to the Elastic Fabrics Company under the aforesaid guarantees, amounting, deponents verily believe, to millions of dollars.

That deponents have never become possessed of any information tending to impair the novelty of the invention of the said Smith, but on the contrary deponents believe that a standing warp on each side of which a fabric is woven, was new when invented by the said Smith.

That deponents believe that said Smith has not been adequately remunerated for the ingenuity and the expense bestowed upon the said invention, and the introduction thereof into use, and the deponents believe that he is in justice entitled to an extension of the said letters patent for the term of seven years, as provided by law.

L. B. FRAZIER.
E. T. BUBIER.
ISAAC NEWHALL.

COMMONWEALTH OF MASSACHUSETTS,
Essex, ss:

LYNN, *January* 31, 1867.

Subscribed and sworn to this day by the within-named L. B. Frazier, E. T. Bubier, and Isaac Newhall.

EBEN PARSON,
Justice of the Peace.

[5-ct. rev. stamp.]

927 STATE OF ILLINOIS,
Kane County, town of Batavia, ss:

ENOCH THOMAS, being duly sworn, doth depose and say that he is a resident of the above-named town, county, and State, and a citizen of the United States.

And deponent further says that on the 12th of March, 1840, he took out a patent from the Patent Office in Washington, D. C., in the United States, for a truss called the "hernial and uterine elastic and spring supporter," and deponent further says:

That he used elastic suspender-webbing for the belt of said truss, and the said elastic suspender-webbing was imported from England, and that the said webbing was one and one-half inches wide, made all of white cotton threads, woven together very firmly and made very stout and heavy for that purpose. And the said deponent Enoch Thomas further says:

That he used no half-inch suspender-webbing on said model, neither elastic nor non-elastic, nor did he use any green elastic suspender-webbing, or partly composed of green, but the white one-and-one-half-inch suspender-webbing, as aforesaid, and if any elastic webbing is attached to the model of said truss of one-half inch wide or one and one-half inch wide, of any color, it was not put there by said deponent or with his knowledge or consent, nor was it attached to the said model of the above said truss when delivered in the said Patent Office at Washington, D. C., United States of America.

And deponent further says that there was no other elastic suspender-webbing but one and one-half inches wide, and every part of the model of said truss is described in the specifications, and every color of the straps of said truss, whether of leather or woven webbing, is so colored the same color in the drawing of said patent.

928 And deponent further says that the green and pink stripe webbing attached to this affidavit he never saw or never used at any time in connection with said truss.

All of which deponent verily believes to be the truth.

ENOCH THOMAS.

Subscribed and sworn to before me this 14th day of January, A. D, 1868.

WALLACE CRAWFORD, *J. P.*

[5-cent stamp. W. C. Jan. 14, 1868.]

STATE OF ILLINOIS,
Kane County, ss:

I, HENRY B. PEIRCE, clerk of the county court of said county, in the State aforesaid, do hereby certify that Wallace Crawford, esquire, whose name is subscribed to the proof (L. S.) or acknowledgment of the an-

nexed instrument in writing, was at the time of taking such proof or acknowledgment a justice of the peace in said county, duly commissioned, sworn, and acting as such, and authorized to take the same, and further, that I am well acquainted with his handwriting, and verily believe that the signature to the proof or acknowledgement is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Geneva, in said county, this 15th day of January, 1868.

HENRY B. PEIRCE, *Clerk.*

[5-cent stamp. H. B. P. Jan. 15, 1868.]

929 STATE OF ILLINOIS,
Kane County, town of Batavia, ss:

ENOCH THOMAS, being duly sworn, doth depose and say that the stiching on the truss mentioned in the foregoing affidavit was very fine chain-stitching, the holes being made by a fine flat awl, and the holes made by said awl being close together, having a neat, beautiful appearance in the stitching.

All of which deponent verily believes to be the truth.

ENOCH THOMAS.

Subscribed and sworn to before me this 15th day of January, A. D. 1868.

WALLACE CRAWFORD, *J. P.*

Ex'd.—M. P. H.

Affidavit of Enoch Thomas, filed by William Smith, in relation to reissue B, elastic fabrics. Filed Jan. 23, 1868.

Reissue of William Smith's patent, imp. in looms and elastic fabrics.

NEW YORK, *Oct.* 26, 1867.

SIR: In presenting the accompanying affidavits permit me to call the attention of your honor to the following statements:

1st. It appears from a copy had from your office that an argument has been filed in opposition to this case, without any signature and only the names of certain patent agents endorsed upon it. What are we to conclude—that the real parties opposing had some underhand object in keeping out of sight, that the opposition is not a square, manly protest with grounds to stand upon, but a lengthy ex-parte argument that in any court of justice would have no more weight than the statement of a maniac? Permit me to express the hope that the ruling of the
930 Patent Office in these early stages of reissue opposition will be such that all such proceedings will be prevented in future.

2nd. The argument in question, when winnowed of its mass of chaff, may be summed up as follows:

(A) That the fabric cannot be distinguished from other previously known fabrics.

(B) That if the fabric derives its novelty from the loom in which it is made, and has no intrinsic qualities, a claim cannot be made on the fabric.

(C) That Smith, in his model and drawings, originally did not show the fabric.

(D) That a claim might be allowed to the applicant which would be folly in its wording, useless in its character, and a discredit to any person allowing or taking such a grant.

As to the point B, we say amen; as to the point A and C, we say they are utterly without foundation. The point C is refuted by the drawing in the original patent, and I know that samples were originally sent.

The question only arises as to the point A. On this we send three affidavits that are more full and to the point than any argument can possibly be. It is unnecessary to repeat the statements; suffice it to say that the present fabric can be distinguished by any person from the fabric before produced.

The patent of Heywood has no bearing upon the presnt case, as was fully understood on the former reissue.

It is my intention to visit your office on Wednesday next, and as the time for affidavits was extended to Monday pursuant to M'r Smith's request, I have now to say that if there is any point requiring attention I shall feel obliged by a delay in action until Wednesday, 30th inst., that it may be attended to and settled then.

Respectfully yours,

LEMUEL W. SERRELL,
Attorney for W'm Smith.

Hon. T. C. THEAKER.
Ex'd.—L. P. H.

931 NEW YORK, *Nov.* 29, 1867.

SIR: In the matter of division B, of W'm Smith's reissue of loom patent, April 5, 1853, extended, the applicant feels aggrieved by the official ruling, and for the following reasons it appears that he has good grounds therefor.

1. Sep. 10 the application was filed, and in the published notice 30 days therefrom was named as time for oppositions.

2. Oct. 18, any opposition was ruled out by Commissioner, M'r Smith and my correspondent, M'r Weidersheim, being present.

3. Oct. 21, we are informed that opposition can be received up to Oct. 25, the ruling being 30 days from actual publication on Sept. 25.

4. Brown & Beadle leave in the Patent Office an argument without date of filing, and without signature; they have not the manliness to say for whom they are acting, nor to desire to be parties to the opposition. Oct. 25th, the examiner decided that they were not parties to an opposition, and so informed Weidersheim.

5. On 4th inst. I wrote enquiring whether there were any parties legally recognised as opponents and entitled to notice.

6. Not hearing from your office for ten days M'r Smith proceeded, at considerable cost and trouble, to obtain the accompanying affidavits of W. J. Uhlinger and William V. Gee; and they were completed and sworn to on 18th inst.

7. Nov. 18 I received the official letter of 16th inst., saying that opposing parties are entitled to notice. I immediately sent word to M'r Smith at Philadelphia, and my letter crosses him as he is returning with these affidavits.

From these statements your honor will see that we have never been informed, either officially or by any opponents, that there was any opposition, and to this day we do not know who the opponents are or when to serve a notice on them; and hence we cannot recognise or have anything to do with an opposition, and consider that the effo.t of the

932 Patent Office to require a notice to be served on a myth is without precedent and can never command serious consideration.

Again, with all due respect to the official actions, I remark that they must be consistent in order to command respect, or else the tone and standing of your department will sink like that of some petty court and its actions be laughed at instead of upheld. By the recital of facts in the foregoing your honor will see that on two occasions no opposition was recognized, and on a last occasion an opposition is recognized. Again, that October 10 is decided to be the last date of opposition, then October 25, and to this present date the reissues are advertised to court opposition for 30 days from the day of filing, not from the day publication. Which ruling is correct? which shall be followed? how shall agents advise their clients? and how shall the official rules be lived up to? are questions that cannot be answered by any one until the official actions are made consistent with themselves.

In view of the foregoing facts I have advised, and my view is sustained by eminent legal authority, that this case be presented to your honor on its merits, regardless of any opposition, real or mythical, and that actual opponents be met face to face in open court, where this patent will be doubtless speedily reviewed.

Permit me to call attention to a separate argument on the merits of this case.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER,
Com'r of Patents.

933 In the matter of reissue of M'r Smith's patent of April 5th, 1853, on looms, &c., division B.

NEW YORK, *Nov.* 29, 1867.

SIR: The attention of your honor is called to a separate communication concerning the ruling of your office on the question of opposition. In this I propose to direct attention to the question of novelty in the division B of this reissue.

In all elastic goods the point of contraction is determined by the weft threads coming closely together side by side, and the point to which the goods can be distended is limited by the warp threads coming nearly into a straight line. In the goods made before the applicant's invention, the woven fabric forming the pockets for the cords prevented the distension of the rubber beyond the point to which such pockets could be stretched. (See Smith's Exhibit No. 1.) In my fabric all the warps, interlocking between the cords, pass around the weft threads on the other side, and hence are necessarily longer than they would be in an ordinary fabric and longer than in the pockets before woven for the rubber, hence the rubber can be stretched much more than was possible with previously made elastic fabrics.

Corded non-elastics fabrics were made before my invention; the cord, however, was introduced as weft, hence the cord was covered by the warps, and in some instances (probably more than the majority of instances) by a fabric woven with warp and weft of nearly the same size, forming a pocket for a surface over the cord. In all these in-

934 stances the fabric woven between the cords was of a usual character, the warp and weft being crinkled about equally, and interlocking so as to form nothing but a plain or an ordinary twilled surface. In those instances where the warps have been made with cords inter-

spersed through the ordinary warps, the warps in being split to form the shed had to be divided, about half the cord warps being on each side, or else the superior stiffness of the cord warps would either raise or depress the edge of the woven fabric itself. This led to the interweaving of the cord warps exactly the same as the smaller warps; in other words, by their rise and fall they were crinkled and interlocked with the weft threads, exactly the same as warps would be that were accidentally larger in places in consequence of imperfections.

Now, in my fabric, the centre warps are not interlocked with the weft threads. They are simply bound and held by the pressure of the weft threads on the centre warp threads, due to the interlocking of the moving warp threads, and these moving warp threads are necessarily longer than they would be in an ordinary plain fabric, because the weft threads, although actually and perfectly interlocked by the moving warps, are not brought to a point where they rise and fall in the interlocking equally above and below a central plane as in ordinary weaving. In other words, my fabric, when the cords are non-elastic, is identically the same as the elastic fabric in its structure, resulting from the interlocking of the threads, and under all circumstances it is a corded fabric, possessing the following features and peculiarities (not separately), but combined, and as a whole going to make up the descriptive and distinguishing characteristics thereof:

1st. My fabric as a whole is a corded fabric, the cords being as close together as consistent with the other features, and as nearly uniform in the distance apart as possible. (This is distinguished from woven fabrics with cords occasionally interspersed for ornament or strength.)

2d. Each weft thread passes right across the fabric, being entirely
935 above or entirely below the cords (as distinguished from weaving in which the cord warps moving with the shed cause the same shot of weft thread to be above and below the cords of the fabric).

3d. The interlocking warps playing up and down between the cords only serve to bind the weft threads to the surface of the cords and hold those cords in place (as distinguished from fabrics in which the interlocking of the warp and weft composes an ordinary plain or twilled fabric between the cords, the interlocking of warps and wefts being equal or nearly so above and below a plain running centrally between the two surfaces of the fabric).

4th. The surface of the fabric, above and below the cords themselves, is only composed of weft threads (as distinguished from suspenders woven before my invention, with a pocket for the cords, composed of both warps and filling).

It is confidentially asserted that previous to the date of my invention there never was a fabric, either elastic or non-elastic, containing all the four features before enumerated, and although this mode of weaving is specially adapted to elastic fabrics, and although the elastic fabric itself might be patented (even if such a combination of threads in a non-elastic fabric were before known, in view of the utility in the firm holding of the elastic cord, and the increased extent of distension allowed of, still it is believed that the patent should be granted for the fabric without limitation to the cords being elastic.

The specification and claim are concise, but should any modification or amplification be deemed important please advise.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER,
Comm'r of Patents.

936 *Amended complaint.*

Court of common pleas for the city and county of New York.

WILLIAM SMITH
vs.
BETUHEL DODD AND JOHN P. WAKEMAN.

The amended complaint of William Smith, the plaintiff, respectfully shows to this court:

That the plaintiff, William Smith, and the defendants, Bethuel Dodd and John P. Wakeman, on the 13th day of November, 1849, entered into an agreement of which the following is a copy:

Articles of agreement between William Smith, of New York, and Dodd & Wakeman, of Newark, New Jersey.

Whereas it has been represented to Bethuel Dodd and John P. Wakeman, constituting the firm of Dodd & Wakeman, that William Smith, of the city of New York, is the owner of four power-looms and fixtures belonging to the same, designed for weaving and manufacturing elastic and other webbing; and whereas it is uncertain as to the quality and value of the goods manufactured, or whether they will answer the purposes for which they are designed, yet being willing to test the matter by a fair trial, the said Bethuel Dodd and John P. Wakeman do
937 hereby agree to and with the said William Smith, that in case the said William Smith shall remove the machines mentioned as aforesaid, to Newark, N. J., they will furnish him room and power appropriate to carrying on said business, and also advance the amount necessary to purchase the goods and stock used in the various articles to be manufactured by them jointly.

And the said Bethuel Dodd and John P. Wakeman further agree to and with the said William Smith, that if under the arrangement proposed, the business shall result in the manufacturing of such goods as shall answer the purposes for which they are designed, that then, at the earliest period, they will enter into articles of copartnership with the said William Smith, based upon the following conditions, to wit:

First. The firm when constituted, shall consist of William Smith, John P. Wakeman, and Bethuel Dodd.

Second. William Smith shall have the superintending of the manufacturing department, and Bethuel Dodd and John P. Wakeman, or both, shall have the direction of the business, make all the purchases and sales, with the advice and consent of William Smith, keep the books of the firm and attend to all business arrangements.

Third. The profits to be divided equally between the partners.

Fourth. Dodd and Wakeman to have the preference in sales, at the full market value of the goods.

And the said William Smith does hereby agree to and with the said Bethuel Dodd and John P. Wakeman, that the above conditions of partnership he will stand to and abide by as fully and completely as they are bound by this agreement.

And the said William Smith does further agree to and with the said Bethuel Dodd and John P. Wakeman, that he will guarantee that the goods named by him can be made at a profit equal "*to twenty-five per cent.*" [original underlined], and that they will be equal in character
938 and value to those at present imported. And also, that he will guarantee the said Dodd & Wakeman against loss in the ad-

vances made by them, and that if unsuccessful in the attempt to manufacture the goods named, that they, the said Dodd & Wakeman, shall hold the looms and fixtures as security for the payment of advances made by said firm to him, it being understood between the parties that the guarantee concerning the twenty five per cent. refers only to the experimental trial.

In witness whereof, the several parties herein named have hereunto set their hands and seals this thirteenth day of November, eighteen hundred and forty-nine.

BETHUEL DODD. [L. S.]
JOHN P. WAKEMAN. [L. S.]
WILLIAM SMITH. [L. S.]

Signed, sealed, and delivered in presence of—
HORACE N. CONGER.

And the plaintiff avers that, immediately after making the said agreement, he proceeded to perform all that was required to be done by him, according to the terms thereof; that he removed the said looms and fixtures in the said agreement referred to to Newark, New Jersey; that he proceeded to and did manufacture goods of the kind and quality referred to in the said agreement, and that the goods which were then and there manufactured by him in pursuance of the said agreement were manufactured at a profit equal to twenty-five per cent., and were equal in value and character to those then imported, and that he has fully performed all the conditions of the said agreement on his part to be performed.

And the plaintiff further avers that he paid, laid out, and advanced, for and on account of the defendants, towards purchasing the necessary stock and goods, for various other purposes connected with the said manufacturing business, the sum of three hundred and fifty dol-
939 lars, and that the defendants did not advance the amount necessary to purchase the goods and stocks used in the various articles to be manufactured by them and the plaintiff jointly; and that they wholly neglected and refused to advance such necessary amount, and that although the said manufacturing business did result in the manufacturing of such goods as would answer the purposes for which they were designed, the defendants wholly neglected and refused to enter into any partnership with the plaintiff, and wholly neglected and refused to fulfill and comply with the terms of said agreement.

And the plaintiff further avers, that by reason of the defendants refusing to furnish the necessary funds to purchase the goods and stocks as hereinbefore stated, and by reason also of the defendants and their agents entering into and upon the premises and machinery used and occupied by plaintiff in conducting the said business, and taking possession thereof, and expelling and excluding him therefrom, the plaintiff was prevented from and was unable to test the matter of manufacturing the said goods by a fair trial, according to the terms of the said agreement, as fully as he otherwise could and would have done.

Wherefore, the plaintiff charges that, in addition to the sum of three hundred and fifty dollars advanced by him as above stated, he has been greatly damaged by means of the defendants' violation of the terms of the said agreement, by their not furnishing the necessary means to conduct the said business, and to test the matter of manufacturing the said goods by a fair trial; by the plaintiff's loss of time and services in conducting the said business; by the use and employment of the said ma-

chinery in the said business, and in the removal thereof from New York to Newark; and by the loss of the profits which would have accrued to the plaintiff of and from the partnership between him and the defendants. Which damages, together with the sum aforesaid, amount to five thousand dollars, for which the plaintiff prays judgment.

NEWTON & REED,
Pl'ff's Att'ys.

940 CITY AND COUNTY OF NEW YORK, *ss:*

WILLIAM SMITH, the above plaintiff, being duly sworn, says that the above complaint is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me this 11th day of June, 1851.

JOHN D. HOYT.
Comm'r of Deeds.

Answer.

N. Y. court of common pleas.

WILLIAM SMITH
ag'st
BETHUEL DODD AND JOHN P. WAKEMAN.

The defendants, for answer to the amended complaint in this action, deny that he plaintiff, immediately after making the agreement set forth in the amended complaint, proceeded to perform all that was required to be done by him according to the terms thereof, or that he removed the said loom and fixtures in the said agreement referred to to Newark, New Jersey, or that he proceeded to or did manufacture goods of the kind or quality referred to in the said agreement, or that the goods which were then and there manufactured by him in pursuance of said agreement were manufactured at a profit equal to twenty-five per cent., or were equal in value or character to those then imported, or that the plaintiff has fully or substantially performed all the conditions of the said agreement on his part to be performed.

941 The defendants further say, to the best of their knowledge, information, and belief it is untrue, and they deny that the plaintiff paid, laid out, or advanced, for or on account of defendants, towards purchasing the necessary stock and goods, or for various or any other purposes connected with the said manufacturing business, the sum of $350, or any sum.

The defendants say it is not true that they did not advance the amount necessary to purchase the goods and stocks used in the various articles to be manufactured by them and the plaintiff jointly, or that they neglected or refused to advance such necessary amount, or that said manufacturing business resulted in the manufacturing of such goods as would answer the purposes for which they were designed, or that the defendants wholly or in any degree neglected or refused to comply with the terms of the said agreement.

The defendants deny that for the reasons stated in that behalf in said amended complaint, or by reason of any act or default of the defendants, the plaintiff was prevented from, or was unable fully to test the matter of manufacturing the said goods by a fair trial, according to the terms of

said agreement, or that the plaintiff had been greatly or at all damaged by means of any violation by the defendants of the terms of said agreement, or by their not furnishing the necessary means to conduct the said business or test the manner of manufacturing the said goods by a fair trial, or by the plaintiff's loss of time or services in conducting the said business, or by the use or employment of the said machinery in the said business, or in the removal thereof from New York to Newark, or by loss of profits, or that the plaintiff is entitled to $5,000, or any other sum, of the defendants for damages.

The defendants further say that the machinery to be used in the said manufacturing business was removed from New York to Newark at their expense; that they furnished room and power for the purposes of such manufacturing business; that they furnished the money neces-
942 sary to purchase the goods and stock to be used in said manufacturing business, and to establish and carry on the said business, and used great efforts to make the business successful, but that the plaintiff was incompetent to carry on the business, and unable to manufacture an article fit for market, and entirely failed to meet and sustain his representations and promises contained in said agreement; that the said business did not result in the manufacturing of such goods as would answer the purposes for which they were designed; that the said goods mentioned in said agreement could not be and were not manufactured at a profit equal to twenty-five per cent., or at any profit, and were not equal in character or value to those then imported.

The defendants further say, that the attempt to manufacture the said goods was entirely unsuccessful; that such want of success was not in any way or degree owing to any default of the defendants; that the defendants made large advances for the use of the said business, for which they have not been in any manner reimbursed, repaid, made good, or secured; and that plaintiff, by reason of his representations to the defendants in the premises, and by reason of his guaranty in the said agreement contained, is liable to them for such advances under the said agreement.

SANFORD, PORTER & STRIKER,
Attorneys for Defendants.

STATE OF NEW YORK,
City and County of New York, ss:

BETHUEL DODD, one of the defendants in this action, being sworn, says, that the foregoing answer is true of his own knowledge, except as to the matters therein stated upon information or belief of the defendants, and as to those matters he believes it to be true.

BETHUEL DODD.

Sworn to this fifth day of July, 1851, before me.

NATH'L JARVIS, J'R,
Comm. of Deeds.

943 *Reply.*

Common pleas for the city and county of New York.

WILLIAM SMITH
vs.
BETHUEL DODD AND JOHN P. WAKEMAN.

The plaintiff, in reply to the answer of the defendants to the amended complaint in this action, respectfully shows to this court:

He admits that the defendants furnished room and power for a short period for the purposes of the manufacturing business referred to in the complaint and answer, but he avers that they did not furnish such room and power for as long a period as they were required by the agreement between the said parties.

He denies that they furnished the money necessary to purchase the goods and stock to be used in the said business, and to establish and carry it on, or that they used great or any efforts to make it successful, or that he, the plaintiff, was incompetent to carry it on, or unable to manufacture an article fit for the market, or that the plaintiff entirely failed to meet and sustain his representations and promises contained in said agreement.

He denies that the attempt to manufacture the said goods was entirely unsuccessful, but he avers that the attempt, so far as the plaintiff was allowed by the defendants to make it, was highly and completely successful, and that if there was any want of success it was entirely owing to the defendants' default, and he denies that the defendants have made large advances to the said business or such advances as they were bound to make, or that the plaintiff is liable to them for any advances by them alleged to have been made.

NEWTON & REED,
Plff's Att'ys.

944 CITY AND COUNTY OF NEW YORK, *ss:*

WILLIAM SMITH, the above plaintiff, being sworn, says that the foregoing reply is true of his own knowledge, except as to the matters therein stated upon his information or belief, and as to those matters that he believes the same to be true.

WILLIAM SMITH.

Sworn to before me, this 10th day of July, 1851.

JOHN D. HOYT,
Comm'r of Deeds.

Complainant's proposition and respondents admission as to affidavits.

Nov. 24, 1869.

Complainant proposes to call James C. Elms, Nathan Nichols, Charles Winslow, Isaac Newell, E. T. Bubier, L. B. Frazier, and W'm R. Perkins to certify that they signed the affidavits which were used by complainant in his application for an extension of his patent, and which purport to have been signed by them respectively, and certified copies of which the complainant proposes to introduce in evidence. Mr Dean, counsel for respondents, here admits that said witnesses, if produced, would testify that they signed said affidavits; and that said affidavits, or certified copies thereof, or press copies thereof, may be used in evidence in the same manner and with the same effect as if their testimony was taken as proposed, and they testified that they had signed said affidavit.

Quod attestor.

N. A. PARKS.
Examiner.

945 The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office.

In testimony whereof I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five and of the Independence of the United States the eighty-ninth.

[L. S.]

D. P. HOLLOWAY.

This agreement, made between William Smith, party of the first part, and the Silk Man'f'g Co., party of the second part, witnesseth:

That the said William Smith sells to said company his patent right, dated 5th April, 1853, for improvement in weaving, by which the shuttles pass from right to left and left to right simultaneously, with fixed and moveable warps, and also one loom for making Congress webbing, one ditto for making suspender webbing, and two machines for cutting rubber threads, and all other machinery and appurtenances owned by him, and also all inventions heretofore made or hereafter to be made by him applicable to the business of said company, and he agrees to furnish all necessary assignments and papers to enable said company to take out such patents in its own name, and the said company agree to pay the said Smith, for the above-mentioned, the sum of six thousand dollars, payable three thousand dollars in the stock of said company at par, say thirty shares, and three thousand dollars in cash, it being understood that a license has heretofore been granted to Henry Davenport for the right to make goods under said patent not exceeding one and a quarter inch in width, and that no other license has been granted under said patent.

946 It is further understood that four thousand dollars of said $6,000 is for patent rights, and two thousand for machinery.

W'M SMITH.

NEW YORK, 7 *May*, 1856.

JOHN CAMPBELL,
BENJ. F. LEE,
W'M SMITH,
Trustees.

Received, New York, 7th May, 1856, from the Silk Manufacturing Co. two thousand dollars on account of the within contract.

$2,000.

W'M SMITH.

New York, 14th May, 1856, received from Silk Manufacturing Co. five hundred dollars on the within contract.

W'M SMITH.

New York, May 20th, 1856, received from Silk Manufacturing Co. five hundred dollars on the within contract.

W'M SMITH.

Rec'd & record. Mar. 22, 1862.

Whereas letters patent of the United States of America, bearing date the fifth day of April, A. D. one thousand eight hundred and fifty-three, were duly issued to William Smith, of the city, county, and State of New York, for improvements in weaving corded fabrics;

And whereas all the right, title, interest, privileges, and benefits to, for, and in said letters patent and invention or inventions (except as hereinafter set forth) have been by divers deeds and assignments duly vested in and are now held and enjoyed by me, the undersigned, Lawrence Campbell;

And whereas the transfer to me of said letters patent was understood to be subject to a certain license and agreement between William Smith and Henry Davenport, dated February 13th, 1854:

947 Now, therefore, know all men by these presents that I, the said Lawrence Campbell, for and in consideration of the sum of one thousand five hundred dollars to me in hand paid by the Goodyear Elastic Fabrics Company, the receipt which is hereby acknowledged, have assigned, sold, transfer'ed, and set over unto the said Goodyear Elastic Fabrics Company, their successors and assigns, the full, absolute, and entire right, title, and interest which I have in and to the said letters patent and inventions, as fully as the same could have been held and enjoyed by me had this transfer not been made.

In witness whereof I have hereunto set my hand and seal as such owner as aforesaid, at the city of New York, this seventeenth day of April, A. D. one thousand eight hundred and sixty-two.

[SEAL.] LAWRENCE CAMPBELL.

STATE OF NEW YORK,
City and County of New York, ss:

On this nineteenth day of April, A. D. 1862, before me personally came Lawrence Campbell, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same for the uses and purposes therein mentioned.

THO'S S. RIVETT,
Notary Public City and County of New York.

Rec'd Ap. 28, & record. May 1, 1862.

948 *Copy of agreement with Oberer.*

Common pleas.

SMITH
vs.
DODD AND WAKEMAN.

NEW YORK, *Dec.* 11, 1850.

This agreement, made and concluded this 11th day of Dec., 1850, witnesseth: Sebastian Oberer, of the first part, a resident of Yorkville, New York County and State, agrees to manufacture and put up in our weaving factory at Newark, N. J., one loom, called a swivel loom, to weave six webs the same and in every respect equal to the samples of elastic shoe web, a sample of which is in possession of both the parties.

The time specified for the building and completing the loom in complete running order is not to exceed the time of six weeks from the day of the date of this agreement. M'r Oberer further agrees to and with the parties of the second part to weave one yard of web on the said loom, equal in every respect to the sample, before he considers the loom as finished; and he also further agrees to furnish all the appurtenances for weaving the said loom.

In consideration of the above, Whiting, Dodd & Co., the parties of the second part, doing business in New York, agree to and with the party of the first part to pay him $450 as a remuneration for the same loom, viz, one hundred dollars down and the remainder when the loom is finished.

SEBASTIAN OBERER.
WHITING, DODD & CO.

Signed in presence of—
E. V. B. DODD.

949 NEW YORK, *March 6th*, 1858.

P. Y. CUTLER, Esq.:

DEAR SIR: I am now advised by my counsel to permit you to inspect the elastic web*b* manufactured by M'r Smith, and yet on hand. If you will call to-day or on Monday morning, you can see it.

Yours, &c.,

JOHN P. WAKEMAN,
47 *Chamber St.*

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-first day of January, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.] SAMUEL S. FISHER,
Commissioner.

NEW YORK, *Dec.* 17, 1869.

To the honorable COMMISSIONER OF PATENTS,
Washington, D. C.:

SIR: There are some suits pending in this and other States,
950 brought by William Smith upon his patent for an elastic fabric, in which it is desirable to use in evidence as exhibits portions of an elastic suspender filed by Julius Hotchkiss in his application for a patent for a buckle attachment, stating the date of filing in 1847. The patent was refused and the application withdrawn, and the suspender can never be of any better use than that now applied for.

We will obtain the consent of Julius Hotchkiss to this application, which is for two pieces of the suspender, separately certified to be such by you.

Very respectfully, your ob't servant,

CHA'S M. KELLER,
Counsel for the Complainant.
BENJ. DEAN,
Counsel for Defendants.

22 COURT STREET, *Boston.*

Desirous of aiding the above-mentioned investigation, I cheerfully consent to the use of the fabric which may have been deposited by me in the Patent Office, as requested in the foregoing communication.

JULIUS HOTCHKISS.

My impression is that there is no buckle attachment to the web desired, but simply a piece of corrugated web.

J. HOTCHKISS.

Ex'd.—P. A. C.

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the specification and drawing in the matter of letters

patent granted Julius Hotchkiss, dated 15th May, 1847, ante-
951 dated 22d December, 1846, suspender and buckle.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-first day of January, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.] SAMUEL S. FISHER,
Commissioner.

Julius Hotchkiss, Waterbury, Connecticut, letters patent No. 5120. Ante-dated 22d Dec., 1846. Dated 15th May, 1847.

To all whom it may concern:

Be it known that I, Julius Hotchkiss, of Waterbury, in New Haven County, and State of Connecticut, have invented a new and useful improvement in the mode of attaching the front end of a suspender to the buckle, and I do hereby declare that the following is an exact description:

The nature of my invention consists in attaching with an eyelet or rivet a leather loop to a suspender-buckle, and particularly the manner of its connection, so as to form a joint or swivel, operating in its use and application conformable to the particular wants of such an article.

To enable others skilled in the arts to make and use my invention I will proceed to describe its construction and application. In constructing the buckle, to which my invention is to be applied, I make a half circular ring or bow C, about half an inch in diameter, immediately behind the tongues and attached to the bar in which the tongues are. I then take a piece of leather, D, of suitable form and size for a loop with
952 perforated ends, and bring the two ends together over the half circular ring or bow C, and close them, as seen at B, within the half circle or bow C, with the eyelet or rivet E; the front end or strap of the suspender is then put through the loop D, and completed as seen in A B.

I claim securing the leather strap or loop to the suspender-buckle in the manner described, by means of the eyelet or rivet, whereby I obtain a durable and cheap mode of fastening at the same time with a durable and serviceable swivel-joint.

JULIUS HOTCHKISS.

Witnesses:
HENRY MERRIMAN.
HENRY H. HAYDEN.

Ex'd.—N. F. S.

WATERBURY, *Aug. 17th*, 1847.

MR ELLIOT:

D'R SIR: I wrote you six weeks since desiring you to assist me in obtaining a patent. Not hearing from you, I suppose the proposition was not satisfactory, and you have not moved in the matter. I herewith withdraw the propositions then made for the present, as I have something more I wish to add. If you please preserve the samples sent. I shall most probably visit Washington the coming winter; will then see you.

Yours respectfully,

JULIUS HOTCHKISS.

WM P. ELLIOTT, Esq.,
Washington City, D. C.

Post-mark: Waterbury, Aug. 18, Ct.

(Endorsement:) Julius Hotchkiss, esq., Waterbury. Received August 21st. Answered August 21st, 1847.

953 The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[SEAL.] SAM'L S. FISHER,
Commissioner.

Petition.

To the Commissioner of Patents:

The petition of Julius Hotchkiss, of Waterbury, in the county of New Haven, and State of Connecticut, respectfully represents:

That your petitioner has invented new and useful improvements in his patented mode of constructing straps, and attaching them to suspender buckles, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and complied with other provisions of the said act.

He further prays that William P. Elliot may be recognized as his lawful attorney and agent, to alter and amend the specifications, drawings, and claims, and to execute and deliver any papers, models, and drawings, and generally to do and perform all such acts, matters, and things as may be necessary for the obtaining of said letters patent, or for the withdrawal of the application for the same should it be
954 deemed advisable, and to receive such sum of money as the law provides shall be returnable, under such circumstances, to any applicants for letters patent; also to receive and transmit the patent when granted.

Signed at Waterbury, in the State of Connecticut, the 25th day of August, in the year of our Lord eighteen hundred and forty-seven.

JULIUS HOTCHKISS.

Oath.

COUNTY OF NEW HAVEN,
State of Connecticut, ss:

On this 25th day of August, 1847, before the subscriber, a justice of the peace in and for the said county, personally appeared the within named Julius Hotchkiss, and made solemn oath that he verily believes himself to be the original and first inventor of the before described improvements on his patented mode of constructing straps, and attaching them to suspender buckles, and that he does not know or believe that

the same was ever before known or used; and that he is a citizen of the United States.

DAVID B. HAND,
Justice of the Peace.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Julius Hotchkiss, of the town of Waterbury, in the county of New Haven, and State of Connecticut, have invented new and useful improvements on my patented mode of constructing straps and attaching them to suspender buckles, which are described as follows, reference being had to the annexed drawings of the same, making part of this specification:

In the specification appended to the letters patent granted to me on the 15th day of May last, and ante-dated December, 1846, for
955 "securing the leather strap or loop to the suspender buckle in the manner described, by means of the eyelet or rivet," I omitted to describe the various methods of applying my principle of fastening the ends of straps with metallic rivets, and the advantages arising therefrom, and now desire to supply some of the omissions in the patent here solicited.

I sometimes pass the leather strap through the eye or loop of the buckle, and bring the two ends together, and fasten them with a metallic eyelet, in the manner represented at E, figure 1, through which eyelet I pass a round strap, to which the tongues are fastened, these being also fastened by metallic eyelets as seen at *e*, Fig. 2.

I sometimes attach the loop to the buckle, in the manner represented in figure 2, by passing one end of the strap through the eye or loop of the buckle, and folding it and bringing the other end over the same, and securing the ends thus lapped to the strap by a metallic eyelet E^1, forming a leather loop L below the eyelet for the reception of the round strap or suspender cord C, which is inserted in the manner represented in figure 2.

I likewise connect two straps, B D, one of which is broader than the other, by two eyelet rivets, E^2, E^3, in the manner represented in figure 3, to form the loop L^1, one of the rivets being passed through the metallic loop or eye of the buckle, and performing the function of a swivel-joint, and the other passed through the two leathers, and serving the office of a swivel joint, upon which a yoke, F, is suspended at the middle, having an eye at each end, to which are attached the tongue straps E, by folding the upper ends over the eyes of the yoke, and passing rivets or eyelets, E^4, through them. I prefer to have the yoke flattened and the eyelet E^3 to be passed through its centre, as represented in Fig. 3.

The tongue strap or bow C, C, C^{11} is composed of three pieces of leather and two metallic eyelet rivets, *e e*. The bow C is made of russet leather, rendered pliable by wetting it, and then drawing it through a die to give it a cylindrical form.

956 The ends of the tongues C C^{11} are then split and the ends of the bow strap C flattened and inserted in the split ends of the tongues, and secured to the same by means of eyelet *e* inserted through them and said tongues.

By this mode of constructing tongue straps, a piece of leather of uniform width may be used to form the round portion or bow, C, and scraps

that are usually thrown away may be used for the tongues C', C'', such as scraps of buff or other colored leather which will not round in a die, but which will answer very well for the button-hole. This mode of construction also cheapens the strap, by doing away with the necessity of cutting the leather to form it wider at the ends than in the middle, in order to form the tongues, besides enabling the manufacturer to work up pieces of leather that are considered almost useless, thus saving stock; and using cheaper leather and making a better article. As the tongues should be soft and pliable, it is better to make these of buff scraps doubled, and enclosing the flattened ends of the bow, or of a single piece split as before mentioned, or made thin, and inserted into the ends of the tongue previously split to receive them, before the rivets are inserted and secured. The bow and tongues thus made are far superior to those made of single pieces.

The metallic yoke F, Fig. 3, which I propose to use in some cases as a substitute for the round bow or tongue strap, is made of wire, bent to a form approximating to that of a semi-ellipses, turned up at each end, forming a circular eye, over which are lapped the ends of long, flat, pliable straps, through which are passed metallic eyelet rivets, by which the parts are not only held securely together, but convenient swivel-joints are produced at the end of the yoke, and being combined with the loop, composed of two straps and two eyelets, in the manner represented, an additional swivel-joint is formed, upon which the metallic yoke or bar is suspended at its centre, and on which it has its bearing and movement.

This wire yoke is less cumbersome than the round bow, and enables me to use long, flat, pliable straps for the tongues. Figure 4 rep-
957 resents an ordinarily formed loop, stitched in the usual manner, requiring four times the labor to unite the ends of the loop than by means of riveting—the thread costing nearly as much as the eyelet—the thread fastening being less durable than the metallic rivet, and being deficient of the advantages possessed by the eyelet as to the swivel-joints and metallic bushed apertures for the bows, whether made of leather or wire.

What I claim as my invention, and desire to secure by letters patent, is:

1st. The combination of the metallic yoke F, pliable tongues E, and metallic swivel-joint E^3, represented in Fig. 3, as combined with my suspender-buckle loop, as set forth.

2d. I claim the manner of forming the bow C and tongues by means of an enclosed strap, rounded in a die, and united to separate pliable tongues by metallic eyelets, as described.

3d. I claim the mode of uniting the ends of a loop for suspender buckles, by a perforated metallic rivet E, Fig. 1, which answers as a metallic lining for the opening to receive the bow, and as a substitute for sewing.

4th. I claim uniting the ends of straps for loops of suspenders, by means of metallic eyelets, instead of thread sewing, whether united in the forms described and represented, or in any other form where the eyelet attachment is used as a substitute for stitching, in the manufacture of suspenders.

I also claim passing the eyelet E^3 through the middle of the yoke F.

JULIUS HOTCHKISS.

Witnesses:

CHARLES B. MERRIMAN.

HENRY H. HAYDEN.

No. 4471. 7 SEPT., 1847.

I' conformity to an act of Congress entitled "An act to promote the progress of the useful arts," approved 4th of July, 1836, I have received
of Julius Hotchkiss, Waterbury, Ct., thirty dollars, which sum
958 has been placed to the credit of my account in the Treasury U.
States, under date of 30 August, 1847, and for which I have signed a receipt patent.

[Straps for suspender buckles.]

W. SELDEN,
Treasurer of the U. States.
DANIEL GRAHAM,
Register of the Treasury.

Registered.—S. S.

PATENT OFFICE, U. S. A., *Aug.* 18, 1848.

SIR: Your application for letters patent for a suspender strap has been rejected for reasons assigned in the official letter of this date, addressed to you through your agent, H. P. Elliot, to whom you are referred for information.

E. B.

JULIUS HOTCHKISS,
Waterbury, N. Haven Co., Conn.

PATENT OFFICE, *Aug.* 18, 1848.

SIR: Your application for letters patent for an alleged improvement in suspender buckles has been examined and rejected for want of novelty. A patent was granted to James Bingham February 4, 1843, for a suspender strap with a metallic yoke similar to yours. The use of the metallic eyelets for fastening instead of stitching is a very common device, and answers no new purposes in your application of it to suspender straps.

E. B.

JULIUS HOTCHKISS,
(Care of W. P. Elliott, agent, Washington, D. C.)

TO THE COMMISSIONER OF PATENTS:

SIR: I hereby withdraw my application for a patent for a sus-
959 pender fastening now in your office, and request that twenty dollars may be refunded to me, agreeably to an act of Congress in such case made and provided.

JULIUS HOTCHKISS,
Per WM P. E. ELLIOT,
Agent.

Aug. 25, 1848.

PATENT OFFICE, , 184 .

Please date, sign, and return the above receipt, and twenty dollars will be paid to your order at this office, or remitted by mail in gold, as you may direct.

EDMUND BURKE,
Commissioner of Patents.

Julius Hotchkiss, town of Waterbury, county of New Haven, State of Conn.

STRAP FOR SUSPENDER BUCKLE.

Received, Aug. 30, 1847.
Petition, "
Affidavit, "
Specification, "
1 drawing, "
Model, "

TREASURER'S CERTIFICATE.

Cash $30, Aug. 30, '47.
3 examined,
Issue,
Patented, , 184 .
Recorded, Vol. , page .
Cash to W. P. Elliott, 25 Aug., 1848.
W. P. Elliott.
Reported to examiner July 21st, 1848.
Ex'd, K. M. S. Rejected Aug. 18, 1848.

D'R *John W. Corlies & Co.* C'R

1854.

Jan.	1.	Goods on hand, viz:		
		90 y'ds bl'k silk web, 10s	112	50
		39¾ " " mohair web, 6s	29	81
		9½ " " " cut edge web, 4s	4	75
		80 " brown cut edge web, 6s	60	
		20¼ " drab " web, 6s	15	19
		207⅞ " black cotton web, 4s	101	93
		22½ " " on both sides web, 3s	8	43
		43¼ " drab cotton web, 4s	21	63
		202 " brown " web, 4s	101	
		22 " black " web, 4s	11	
		7 8/12 gross elastics, $30	230	
		1 y'ds black silk	1	25
		64 " " " web, 10s	80	
		80¼ " " cotton web, 4s	40	25
		28 " brown " " 4s	14	
		99 " elastic webbing, 2s. 6	30	94
			$862	68
"	14.	4 p's, 56 y'ds bl'k silk web, 10s	70	
		3 " 49 " " cotton, 4s	24	50
		Forward	$957	18

961

	1854.	Amount forward	957	18
Jan.	17.	14½ y'ds black silk web, 10s	18	12
"	29	" silver drab silk web, 12s	43	50
		14½ " middle sh'd silk web, 12s	21	75
"	19.	½ gross elastics, $30	10	
	21.	5 p's, 68 y'ds bl'k silk web, 10s	85	
		1 " 16 " silver drab silk web, 12s	24	
		1 " 8 " middle sh'd drab web, 12s.	12	
	28.	62½ y'ds bl'k silk web, 10s	78	12

962

1854.				
Jan.	31.	Sales in January:		
		41 y'ds bl'k silk web, 10s	$51	25
		204½ " " " 9s	230	06
		24 " silver drab web, 11s	33	
		108½ " mohair web, 6s	81	39
		115½ " cotton " 4s	57	89
		8½ " doz. elastics, 20s	21	25
		50 gross clasps, 20s	125	
Feb.	28.	Sales in February, viz:		

REC. 264—32

GLENDALE ELASTIC FABRIC CO. VS. SMITH. 497

EXHIBIT 300.—R. E. S., Examiner—Continued.

		16 y'ds silver drab silk web, 12s	24	
		70 " bl'k mohair web, 6s	52 50	
			1,326 17	
		Less 1s. per y'd on silk, 438½ y'ds	54 81	
			$1,271 36	
Jan.	30.	2 gross cotton garters, 16	32	
		12 p's (12 y'ds ea.) cotton web, 1.50	18	
		Amount carried forward	$1,321 36	

963 D'R.

1854.		Amount brought forward	1,321 36
Feb.	4.	35 y'ds black mohair web, 6s	26 25
		23 " " silk " 9s	25 87
		8 " silver drab silk " 11s	11
"	6.	Add 1s. per y'd for 41 y'ds, @ 10s	5 12
		56 y'ds drab mohair, 6s	42
"	7.	50 gross clasps rec. in Jan., 20s	125
"	10.	39 y'ds black silk, 9s	43 87
		34 " col'd " 11s	46 75
"	11.	4 p'c's, 56 y'ds drab mohair, 6s	42
"	28.	Add 1s. per y'd for 49½ y'ds, 10s	6 18
Mar.	1.	16½ y'ds brown silk web, 11s	22 68
"	15.	48 y'ds black cotton web, 4s	24
		11 " drab " " 4s	5 50
		80 " bl'k mohair " 75	60
		12½ " brown silk " 11s	17 18
		Forward	1,824 76

		49½ yd's bl'k silk web, 10s	61 88
		17 " colored silk web, 11s	23 37
		56 " mohair web, 6s	42
		10½ " bl'k cotton web, 4s	5 25
Mar.	24.	Returned M'r Smith:	
		99 y'ds elastic webbing, 2s. 6	30 94
"	31.	Sales in March, viz:	
"	31.	15 gross clasps sold, 20 s	37 50
		Amount carried forward	800 78

964 C'R.

1854.		Amount brought forward	800 78
		Sales continued, viz:	
Mar.	31.	117½ y'ds col'd silk web, 11s	161 22
		19½ " bl'k " " 10s	24 37
		96½ " " " " 9s.	108 56
		181½ " " &c., mohair web, 6s	136 12
		138 " " &c., cotton " 4s	69 00
"	31.	12 gross clasps in Jan., 20s	30 00
		1 " clasps "	2 50
April.		Sales in month:	
"	31.	56 y'ds black silk web, 9s	63 00
		81½ " col'd " " 11s	111 71
		203½ " mohair " 6s	152 63
		194½ " cotton " 4s	97 25
		½ " bl'k silk " 10s	0 63
		½ " elastic 30	15 00
		3 pairs "	0 62
			1,773 39
		Short in J. Corbett's bill	1 50
			1,771 89

965 D'R.

1854.

Mar.	21.		Forward		1,824 76
		2 p's 36	y'ds bl'k silk web, 9s		80 50
		1 " 16½	" slate col'd silk web, 11s		22 68
		2 " 38	" bl'k moh'r web, 6s		28 50
		3 " 29½	" slate col'd cotton web, 4s		14 75
		2 " 23	" claret " " " "		11 50
"	22.	3 " 62½	" slate col'd moh'r, " 6s		46 87
		3 " 62½	" drab " " " 6s		46 88
"	24.	2 " 25	" bl'k silk web, 9s		28 12
		1 " 12½	" slate " " 11s		17 18
		4 " 74	" bl'k cot'n " 4s		37 00
		3 " 35	" drab " " 4s		17 50
		1 " 11	" claret " " 4s		5 50
		1 " 12	" slate " " 4s		6 00
"	24.	1 " 17½	" bl'k mohair web, 6s		13 12
		1 " 8	" drab " " 6s		6 00
		1 " 8	" middle sh'd drab silk, 4s		11 00
		1 " 16	" silver drab silk, 4s		22 00
		1 " 16	" black silk, 9s		18 00
			Forward		2,217 86

967 1854. Amount forward 2,217 86

Mar.	25.	265½	y'ds gaiter webbing, 2s	66 37
April	5.	12	y'ds tan col'd silk web, 11s	16 50
		12 "	drab " " " 11s	16 50
		25 "	bl'k " " " 9s	28 12
		58 "	" mohair " 6s	43 50
Mar.	31.	15	gross gaiter clasps, 20s	37 50
		19½	y'ds bl'k silk (10s.) 1s	2 44
			Baldwin S. & F. returned 59 y'ds bl'k silk web, 9s.	66 38
"	31.	12	gross (elastics) clasps in Jan., 20s	30 00
		1 "	clasps	2 50
April	19.	26	y'ds black silk web, 9s	29 25
		12 "	drab " " 11s	16 50

966 C'R

1854.

			Sales brought forward	1,771 89
May.			Sales in May, viz:	
		44¾	y'ds bl'k silk web, 9s	50 35
		130½ "	mohair " 6s	97 88
		78 "	cotton " 4s	39 00
		1 "	bl'k silk, 10s	1 25
June.			Sales in this month, viz:	
		114½	y'ds black silk web, 9s	128 80
		48½ "	silver-drab silk web, 11s	66 31
		114½ "	bl'k mohair web, 6s	85 88
		11 "	" cotton " 4s	5 50
			Goods returned, viz.:	
June	9.	24½	y'ds bl'k cotton web, 4s	12 25
"	14.	17 "	" " " 4s	8 50
		9½ "	" mohair cut edge, 4s	4 75
"	16.	7¾ "	" slate silk, 11s	10 66
			Also,	
July	7.	6	y'ds brown cotton, 4s	3 00
		½ "	col'd silk	69
			Forward	2,286 71

968 1854. Amount brought forward 2,286 71

July	31.		Sales in month:	
		41	y'ds col'd silk web, 11s	56 36
		66½ "	bl'k " " 9s	74 79
		121 "	" cotton " 4s	60 50
		16¾ "	" mohr " 6s	12 54
			Ret'd 70,79 (in lead pencil)	2,490 90
Aug.			Sales as follows:	
		41	y'ds bl'k silk, 9s	46 12
		39½ "	" mohair, 6s	29 53
		30 "	" cotton, 4s	15
"	31.	26 "	" " 4s	13
		4 "	" silk 9s	4 50
		1 "	" " 10s	1 25

		12½ y'ds tan silk web, 11s		17 18
		51 " moh'r b'k " 6s		38 25
		46 " col'd cotton " 4s		23 00
		Forward		2,651 85
969	1854.	Forward		2,651 85
	April 22.	60 y'ds drab mohair, 6s		45
"	27.	16 y'ds slate silk web, 11s		22
		18 " brown " " "		24 75
		32¼ " tan " " "		44 68
		26 " dark drab mohair, 6s		19 50
		25 " L. " " 6s		18 75
"	27.	Laing M. & Brown:		
		17 y'ds br'n cotton return'd, 4s		8 50
May	6.	42¾ y'ds s. t. & b. silk web, 11s		58 08
		12½ " bl'k silk " 9s		13 78
		56½ " m. shade moh'r " 6s		42 37
		58½ " slate col'd " "		43 87
"	11.	74 y'ds bl'k moh'r " "		55 50
"	24.	19 " " silk " 9s		21 37
		37½ " col'd silk " 11s		51 19
		5¼ " slate mohair " 6s		3 92
"	26.	51 " bl'k " " "		38 25
		Forward		3,163 36
970	1854.	Amount brought forward		3,163 36
	May 29.	20 y'ds drab silk, 11s		27 50
April	"	1½ " silk bl'k (sold @ 10s.)		06
May	31.	1 " " " " " "		12

Aug.	31.	Sold in July, p'd for & cr'd in Aug:		
		55 y'ds bl'k silk web, 9s		61 87
		16 " silver drab web, 11s		22
		(In lead pencil)		2,684 27
		Forward		2,684 27
		Forward		2,684 27
Sep.	30.	Sales in September:		
		53½ y'ds bl'k silk web, 9s		59 91
		1 " " " " 10s		1 25
		2 " col'd " " 11s		2 74
		6 " cl'k cot'n "		3
Oct.	31.	Sales in October:		
		159½ y'ds bl'k silk web, 9s		179 15
		67 " col'd " " 11s		92 13
		6 " moh'r " " 6s		4 50
		265½ " gaiter webbing 2s		66 18
Nov.	30.	By sales in Nov.:		
		29 y'ds bl'k silk, 10s		36 25
		13¾ " col'd " 11s		18 90
Dec.	30.	Sales per retur'd:		
		1½ y'ds mohair, 6s		1 12
Nov.	8.	Del'd W'm Smith, viz, forward,		3,149 40
		Forward		3,149 40
Nov.	8.	15 y'ds bl'k silk web, 10s		18 75
		35 " " " " 9s		39 93
		161 " col'd " " 11s		221 37
		34½ " blk moh'r " 6s		25 87

June	2.	22½	"	bl'k silk web, 9s	25 31
"	3.	22½	"	" " " "	25 31
"	2.	57	"	" moh'r web, 6s	42 75
"	12.	38½	"	drab silk " 11s	52 59
		23	"	bl'k " " 9s	25 87
		34½	"	" moh'r " 6s	25 68
"	16.	71½	"	" silk " 9s	80 44
"	19.	17	"	" " " 9s	19 12
		49	"	drab " " 11s	67 38
"	28.	102½	"	bl'k " " 9s	115 31
				Forward	3,670 80

971	1854.			Amount brought forward	3,670 80
	July	3.	51	y'ds silver drab silk, 11s	70 12
July	3.	36		y'ds bl'k silk, 9s	46 50
		18½	"	m shade silk, 11s	25 44
"	15.	103	"	bl'k cotton web, 4s	51 50
"	19.	7¾	"	slate silk, 11s	10 65
"	1.	Ashmead & Hort, ret'd:			
		31		y'ds bl'k cotton, 4s	15 50
		34½	"	col'd silk, 11s	47 19
Aug.	9.	60	"	bl'k mohair web, 6s	45
"	14.	45	"	" silk web, 9s	50 62
		15	"	col'd " " 11s	20 63
"	21.	70½	"	bl'k moh'r " 6s	52 87
					4,100 82

972	1854.			Forward	4,100 82
	Aug.	19.	Tate & Reid:		
			19¾	y'ds bl'k silk web, 9s	22 22
Aug.	19.	J. Corbett:			
		15¾		y'ds drab silk web, 11s	21 64
		11½	"	cotton " 4s	5 75
		17½	"	mohair " 6s	12 93
"	31.	1	"	silk web (10s.)	12

		249¼	"	col'd " " "	186 93
		91½	"	bl'k cotton " 4s	45 75
		149¼	"	col'd " "	74 62
Dec.	30.	Delivered W'm Smith:			
		4 doz. silk elastics, 2.50			10
		In March:			
"	30.	Stock on hand, viz:			
		Sales in Boston by W'm S			71 05
"	30.	Sales, am't ch'g to profit and loss			62 47
					3,906 14

EXHIBIT 300.—R. E. S., Examiner—Continued.

Sep.	21.	34½ y'ds bl'k silk web, 9s	38 81
"	30.	23½ " " " " 9s	26 44
"	"	C. S. Benedict & Co., ret'd:	
		14 y'ds bl'k silk, 9s	15 75
"	"	1 " " " (10s.)	12
Oct.	20.	35 " " " 9s	39 37
"	24.	36½ " " " 9s	41 06
Nov.	1.	74 " " " web, 10s	92 50
		Forward	4,417 53

973 D'R. C R.

		Forward	4,417 53
Nov.	24.	D. McDougall & Co., ret.:	
		59½ y'ds col'd silk web, 11s	81 46
		12½ " bl'k " " 9s	14 16
Dec.	27.	Sage & Pancost, ret.:	
		29½ y'ds bl'k silk, 9s	33 18
		Received from Boston:	
		161 y'ds col'd silk web, 11s	221 37
		18 " bl'k mohair " 6s	13 50
		249¼ " col'd " " "	186 93
		91½ " bl'k cotton " 4s	45 75
		149½ " col'd " " 4s	74 62
Dec.	30.	Received from Boston	71 05
		Sales by W'm Smith.	
			5,159 55

974 D'R.

1855.			
Jan.	1.	To am't stock on hand from ac't	$1,253 31
"	29.	56½ y'ds mohair web, 6s	42 37
		29¼ " bl'k silk, " 10s	36 56
Feb.	6.	120 " bl'k silk. " "	150

1855.			
Feb.	17.	2½ y'ds silk web sht., 10s	3 12
	20	" mohair, M'r Burke, 6s	15
	1	" bl'k silk, short, 10s	1 25
March	27.	Sales to date:	

Jan.	20.	Laing, Magginnis & Brown:	
		59⅜ y'ds bl'k cotton, 4s	29 72
		16¼ " " mohair, 6s	12 18
Nov.	27.	2 y'ds bl'k cotton, 4s	1
"	"	1 " " silk ch'g' short in error	1 25
		Forward	1,526 39
975		Amount brought forward	$1,526 39
			1,526 39
		3 5/16 y'ds bl'k mohair web, 6s	2 50
		42¾ " " silk " 10s	53 44
		3¾ " " cotton " 4s	1 87
		56⅓ " " mohair " 6s	42 38
"	"	4 3/16 " " " sht., "	3 14
"	"	Returned, M'r Smith:	
		291⅜ y'ds col'd silk web, 11s	400 63
		54⅓ " bl'k " " 9s	60 89
		147⅝ " extra " " 10s	184 68
		357 " col'd moh'r " 6s	267 75
		56¼ " bl'k " " 6s	42 37
		249⅜ " " cotton, 4s	124 69
		160⅜ " col'd " 4s	80 18
		6 1/2 gross elastics, 30	192 50
			1,476 39
		Amount brought forward	1,476 39
		2 gross cotton elastics, 16	32
		3 boxes, 12 ps. ea., 1.50	18
			1,526 39

Having examined the preceding pages of this book, I certify that the handwriting is that of Henry D. Atwater, book-keeper for John W. Corlies & Co., of which firm I was then a member, and the accounts are those then existing between M'r William Smith and said firm, J. W. C. & Co. New York, Dec. 16, 1869.

J. N. TIFFT.

EXHIBIT 300.—R. E. S., Examiner.—Continued.

976 DR. *John W. Corlies & Co.* CR.

1854.				1854.			
Aug.	16.	To cash	$65 03	Jan.	1.	By balance from ac't	$172 58
				Jan.	9.	By cash	30
					"	" " p'd J. Connah bill	162 45
				"	14.	" "	30
				"	20.	" " this book and express paid	75
				"	21.	" " paid on ac't	40
				"	28.	" " " " "	50
				"	23.	" " bill, J. Connah	35 35
				"	26.	" " " W. H. Horstman	106 88
				Feb.	1.	" " paid M'r Johnson	75
				"	"	" " commission on sales	71 62
				"	7.	" cash paid on ac't	150
				"	13.	" " " " "	50
				"	18.	" bill, Henry Davenport, p'd	68 75
				"	28.	" bal'c ac't "	24 38
				"	"	" " commission	16 56
				Mar.	13.	" merchandise sent J. B	23 25
				"	22.	" " M'r S.	34
				"	27.	" cash p'd on ac't	50
				"	31.	" goods returned by B. S. & F	66 38
				"	"	" commission in March	56 01
				April	5.	" cash on ac't	100
						Forward	1,380 30

NEW YORK, *April 1st*, 1870.

I hereby certify that the handwriting above on this page, and that upon the succeeding pages of this book is that of Henry D. Atwater, who at the time and date annexed to the entries was bookkeeper for John W. Corlies & Co., of which firm I was then a member, and the entries relate to the accounts between William Smith and said firm.

J. N. TIFFT.

977

1854.				1854.			
						By amount forward	1,380 30
						Deduct commission ch'g on elastics, Feb. 1st, error	4 25
							1,376 05
April	19.	By cash		April	19.	By cash	250
"	29.	" "		"	29.	" "	250
"	"	"		"	"	" com. 12½ p'r c't on sales	51 66
May	26.	"		May	26.	" cash	100

	" 31.	"	" p'd express	1
	" "	"	commissions	23 57
April	26.	"	Laing, Maginnis & B	8 50
June	3.	"	cash	100
	" 16.	"	"	50
	" 26.	"	"	50
	" 28.	"	"	450
	" 30.	"	commission	35 81
July	24.	"	cash express on goods ret'd	1 25
	" 26.	"	G. N. Davis, goods short	2 22
	" "	"	Ashmead & Hart, goods ret'd	67 50
	" 31.	"	commission on sales	16 81
				2,834 37
1854.			By amount forward	2,834 37
Aug.	3.	"	cash	150
	" 17.	"	do.	150
	" 31.	"	commission	16 35
	" "	"	Tate & Reid, ret'd	22 22
	" "	"	J. Corbett	40 32
				3,213 26
	" "		Less bal. Portuns note	65 03
				3,148 23
Sept.	25.	By	C. S. B. & Co., ret'd	15 75
	" 30.	"	commission	6 38
Oct.	31.	"	do.	42 75
Nov.	1.	"	cash	50
	" 29.	"	"	134 58
	" "	"	"	20
	" "	"	D. McDougall & Co., ret'd	95 52
Dec.	7.	"	Sage & Pancost	33 18
				3,546 39
			Less bal'c com's in his favor, goods re	9 04
				3,537 35

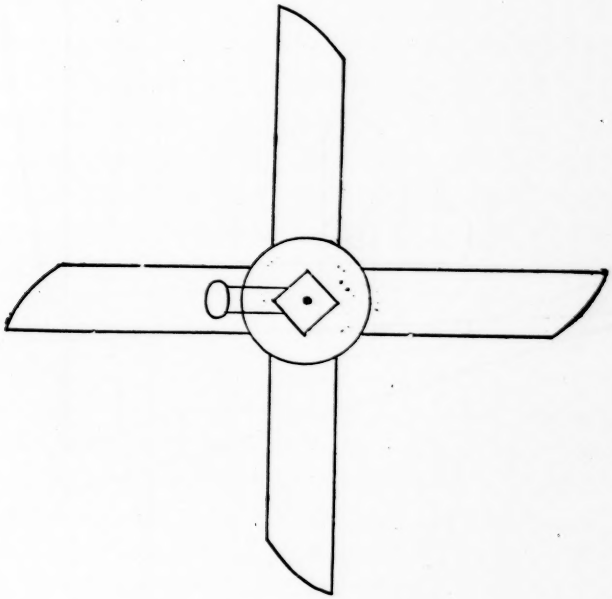
978

EXHIBIT 300.—R. E. S., Examiner—Continued.

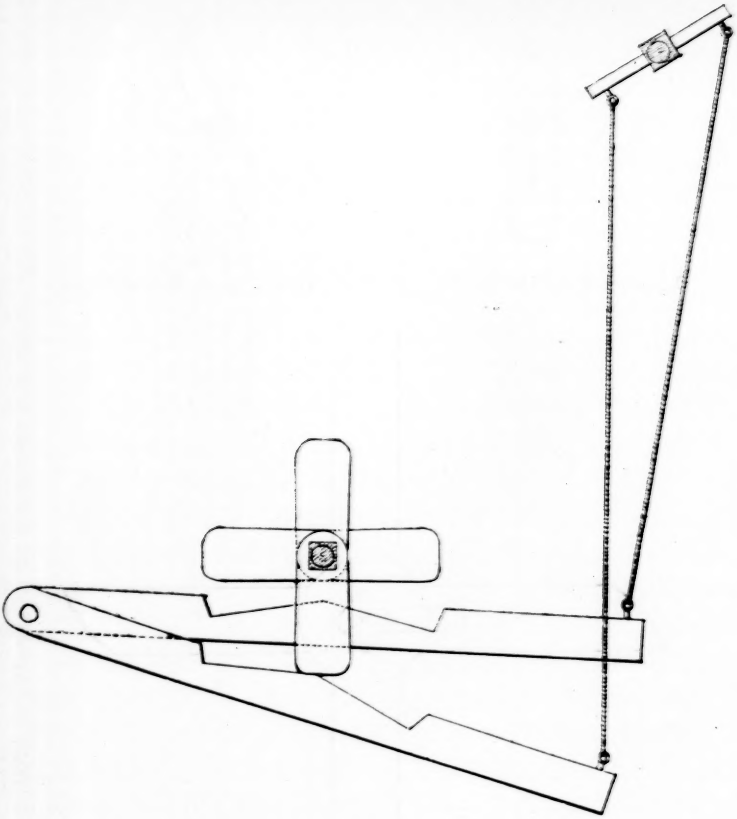
	Dec. 30.	Goods returned before July 31	70 79
			3,608 14
979	1854.	By amount forward	3,608 14
	Dec.	" am't entered on the D'r side as ret. W'm Smith	623 22
	" 31.	By interest on A dams' goods	45 50
	" "	By commis., 10 p'r c't, 71.05	7 05
	" "	" am't cash from B. sales	71 05
	" "	" commission 12½ p'r c't, 62.47	7 80
			4,362 76

Compl't's Exhibit No. 16.—W. Grier Hibler, U. S. Commissioner.

Compl't's Exhibits No. 17.—W. Gier Hibler, U. S. Commissioner.



Smith's Exhibit No. 607.—R. E. S., Examiner.



Smith's Exhibit No. 608.—R. E. S., Examiner.

FIG. 2.

FIG. 1.

Smith's Exhibit No. 610.—*R. E. S., Examiner.*

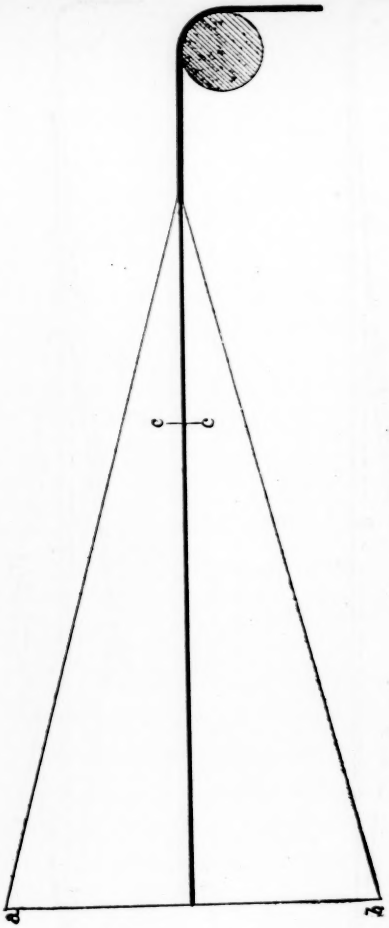


FIG. 3.

980 EVIDENCE FOR COMPLAINANT,

Taken pursuant to the 67th rule of the Supreme Court of the United States, in equity, as amended, before

W'M GRIER HIBLER,
U. S. Commissioner and Special Examiner, by Agreement.

Present, M'r Smith, the complainant, personally; Benjamin Dean, esq., of counsel for respondents.

Deposition of William Smith.

DECEMBER 16, 1870.

WILLIAM SMITH, being duly sworn, deposes and says, viz:

(M'r Dean objects to the testimony of the witness, he having already testified a number of times in this case.)

M'r Smith offers in evidence the examination of Nathan Nichols before Nathan A. Parks, examiner, in the city of Boston, Mass., October 30th, 1869.

"Nathan Nichols, recalled by complainant, doth depose and say in answer to int. propounded to him by W'm Smith, complainant, as follows, viz:

"Question 1. Look at Complainant's Exhibit F, and say if you have sold similar goods, both Union and all silk, during all the year 1868.

"Ans. I have sold web like Exhibit F, and I have sold webbing known in the trade as all-silk web during the time inquired of, but whether either of these goods infringed the complainant's patent I don't know.

("Cross-examination declined.)

"N. NICHOLS."

(M'r Dean calls the attention of the examiner to the fact that the evidence just offered is an extract from a printed book, and objects to the admissibility of the same as incompetent. The examiner accordingly notes that such is the fact.)

Witness replies that the matter of fact he has not before testi-
981 fied to; that the witness himself who took the above-quoted evidence of Nathan Nichols testifies under oath that it is a true transcript of the original.

(Witness offers in evidence a copy of an exhibit offered to Nathan Nichols in the above evidence just quoted, marked Complainant's Exhibit F, W. Grier Hibler, examiner.

Cross-examination by M'r Dean declined, who objected to admissibility in evidence of the last exhibit.)

W'M SMITH.

Deposition of William Smith.

(Taken in the cause of William Smith, complainant, v. The Glendale Elastic Fabrics Company only.)

DECEMBER 16, 1870.

WILLIAM SMITH, the complainant, being duly sworn, deposes and says as follows, viz:

(M'r Dean objects to the witness testifying again, he having already testified a number of times in this cause.)

Witness answers, that from information and belief, through the omis-

sion of a commission from the U. S. circuit court for the district of Massachusetts, that the evidence already taken in the case is not admissible by the rules of said court; therefore the witness offers the following evidence, which will be admissible under written stipulation by the circuit court of the district of Massachusetts.

(Counsel for defendant calls attention to the fact that the witness has already been examined since the making of the stipulation, and objects on that account, as well as because he was examined in said cause before the making of the said stipulation.

Witness replies that the examination spoken of referred to the suit in the said court against Nathan Nichols, defendant, and witness claims the right under the said stipulation to put in his evidence in the most prudent manner that he judges best for himself under the said stipulation.

Counsel for defendant says that said stipulation was entered into with the understanding on his part that pending negotiations for that
982 purpose were about to terminate in a stipulation as to all the testimony taken; any objection that the same was not taken before an examiner of the court should be waived, and all the testimony on one side and the other might be received on the trial of said cause, subject only to other objections thereto, and counsel says he is now ready to enter into such a stipulation; that the time that remains may be used in taking such additional testimony as either party may desire.

Witness replies to the long preamble of counsel that what he intended to do under this stipulation or what he not intended to do, the stipulation must speak for itself, said stipulation being attached to the present and future testimony in the case. That witness has previously been deceived by said counsel in verbal stipulations; that he will not enter into any more, except they are written ones, and witness has been informed by his counsel that he is about drawing up a form of stipulation at the request of M'r Dean, to be submitted to him for his approval. And the witness cannot and will not enter in with M'r Dean into any stipulation, as M'r Dean frequently said to me that he would not treat with me in the matter at all, but with my counsel only.)

Int. 1. What is your name, age, residence, and occupation?

Ans. William Smith. I am 64 on the 7th day of last December. My occupation is trying to maintain my rights against a ring opposed to me. The ring has committed many acts of fraud against me, which will appear upon the record. My residence is 252 Hudson street, New York City.

Int. 2. State, if you please, what is your acquaintance with weaving, and how you acquired it.

Ans. My grandfather and my father were under the employment of John and Nathaniel Phillips, tape manufacturers of Upper Tean, in the parish of Checkley, in the county of Stafford, England. After coming from school I was under my father in the same employ, studying the art of weaving and machinery for weaving and spinning. While there I travelled to different parts of England studying practical weaving and different kind of machinery of various branches. After that I entered into the employ of Mess'rs Stevens & Frost, in the city of Derby, England, who were manufacturers of silk and union galloons, shoe-laces, and of black ribbon; of what was known at the time in the trade as "four-
pennies," sixpennies," and "eightpennies"; and then were also
983 manufacturers of pasteboard, etc. I became what is called a commercial traveller of that house, visiting different cities soliciting orders and receiving funds. After that I went to the city of Mac-

clesfield, Cheshire County, England; while there I studied the weaving broad silks, silk dress-goods, also designing practically. From there I went to Manchester, county of Lancaster, England. There I began to manufacture for myself. I manufactured dress trimmings and gimps. and upholstering trimmings, boot-strappings, float-lace plushes and velvets; the velvets that I manufactured were generally of Scotch plaid patterns for caps. I travelled to different cities for the sale of my own goods, I opened an agency in London, at Foster Lane, just opposite the great lamps on the back part of the post office. I sold goods to most of the principal leading houses in London, and was generally conversant with that part of the trade which is known as small wares. I landed in this country, I think it was the 11th day of May, 1845. During the said summer I built some power looms and put them to work in making cotton and linen fringes, made largely in parasol fringes, but did not manufacture any upholstering trimmings in this country. I continued so to do until about the cholera-time in 1849, I think it was May or June. After my misfortunes came on me, then I removed my machinery up to 15th street, between 8th and 9th avenues, and put one machine to work, or two machines, I think, making bands, and from that time to this I have been acquainted with weaving, and building and fitting up said machines, fitting the necessary apparatus for driving them by power, and consider myself an expert in weaving.

Int. 3. Are you the patentee named in the patents set up in the bill of complaint in this cause?

Ans. I am.

Int. 4. Are you acquainted with E. T. Sawyer, and when and where did you first make his acquaintance?

Ans. I am acquainted with him, and first made his acquaintance at the store of Faxon & Elms, in Boston; I think it was in the summer of 1867.

Int. 5. What was his business at that time?

Ans. He represented himself to me as the agent and superintendent of a Glendale vulcanite-rubber co., having samples of an elastic shoe-goring, soliciting and taking orders for the same, telling me that
984 they were manufacturing goods under my patent machinery and process, and had been from the commencement of the manufacturing at Glendale. The Glendale Vulcanite Rubber Company was afterwards changed to the Glendale Elastic Fabrics Company, and, as I have been informed, the machinery remained in the same form and in the same place, and was not changed with the change of the company.

Int. 6. Have you had any conversation with M'r Sawyer in regard to the fabrics manufactured by these two companies; and, if so, how many, and what was said in each?

Ans. I cannot state how many conversations I have had with him, but to the best of my memory they have been five or six, and the substance of our conversation——

(M'r Dean objected to the witness reading his testimony from a printed book, which the witness has done so far, and desires the examiner to make a note of the fact; and that he should forbid the witness from reading any further from the book.

The examiner notes that such is the case, and as to the latter part of the request, he, however, does not consider it within his province to instruct the witness.

Witness replies, that although he is reading from former testimony given by him he is well conversant with the facts as stated, and he prefers to read his testimony which is not at variance with his present

knowledge, to have it more in form, and he thinks it is a saving of time in putting it on record.

Witness continues :)

——have been always the same except in the last conversation. They all took place from about Christmas, 1866, until the middle of August, 1868. The substance of the conversation, except the last one in August, 1868, and these former conversations all took place in the store of Faxon & Elms and were as follows: "Why don't you bring a suit against us (meaning the Glendale Elastic Fabrics Company and the company prior to that, the Glendale Vulcanite Rubber Company), we are making the goods under your claim; why don't you bring a suit and test the question?" Inviting me, at some of the interviews I had with him, down to the factory at Glendale where I could see the machinery at work.

(Answer objected to as incompetent.)

985 Int. 7. Did you ever visit the factory of defendant's company; and, if yea, whom did you see there, and what did you see there?

Ans. About one or two weeks before I visited the factory I met E. T. Sawyer in the store of Faxon & Elms; he was more urgent at that time than any other for me to visit the factory. I heard also from other parties that he has told them that he had invited me to visit the factory and dared me to bring a suit against them and that I durst not do it. I conferred with M'r Elms and he said, why don't you go to M'r Lovering and get a letter of introduction to the factory? I demurred about going down, fearing that after the trouble and expense of my journey I would not be permitted to go in. I called upon M'r Lovering in Milk street, Boston, at his store, and told him the reason I had called upon him. He said he would give me a letter of introduction which he wrote and handed to me, giving me verbal directions about trains to take to connect at Springfield with trains to Glendale. He further said, "M'r Smith, I never thought you had any rights. How do you intend to charge a tariff? Is it by each loom or so much per yard"? I answered so much per yard. I went right down according to his verbal instructions to the office of the company, which is a little distance from the factory. I handed the letter to E. T. Sawyer. He read it and took me down to the factory; took me into, I think, two different rooms; introduced me to a young man of the name of Buckley who had the management of the looms and fitting up of the weaving department. Us three fell into conversation about the affidavit of E. T. Sawyer and the samples sent which were made by M'r Buckley, which said affidavit of E. T. Sawyer had been purloined from the files of the Patent Office. We spoke particularly about one sample that he had sent to the Patent Office along with the affidavit, where he had introduced on the sample the elastic cord on one heddle shaft and the non-elastic fibrous warp on another heddle shaft and woven and interlocked with the weft in the ordinary manner of plain weaving, which was evidently done to mislead the examiner in the Patent Office as some new kind of fabric they were making different to mine; the elastic cord being not in the centre of the fabric and not covered by the weft had caused such sample to decay, which I saw some ten days ago in Washington, and the elastic rubber cord becoming rotten had partially fallen out of it, while samples made

986 under my process are as apparently perfect as when they were first filed in the Patent Office. We then proceeded down the room and I saw several looms where they were making union shoe-gor-ing; that is, silk on one side and cotton on the other, both shuttles pass-ing through the web simultaneously together. I took particular notice

of the manner in which the lay or lathe and shuttle-boards were constructed. I saw that they were made permanent and a fixture, that they were not made to rise and fall for one shuttle to pass through the shed at one time, but the plane of each shuttle was permanent and made and constructed in exactly the same manner as my specification and drawings and claim, in my patent, Division A, and looking at the stationary warp in the aforesaid loom I saw that they had the stationary warp in the centre of a movable warp, whereas in the drawing of my patent it is shown to be behind the movable warp, but in practice I move the stationary warp from behind to the centre and also to the front of a movable warp, according to the character of the goods I was making at different times. The remaining part of the loom I did not claim under said patent, being varied in the trade according to the taste and opinion of the different parties and according to the goods manufactured.

(Answer objected to as incompetent.)

Int. 8. In the process of weaving which you saw in the Glendale factory how did the filling enclose the stationary warp?

Ans. It was covered, the stationary warp by the weft threads only.

Int. 9. State how the process of weaving which you saw at the Glendale factory differed from that invented by you and secured to you by your letters patent, if at all.

Ans. There was no difference in the process of the weaving but the way it was fitted up showed a great want of knowledge of art in making the goods, which, if all the goods were made similar to what I saw them making at that time, I could distinguish these goods in the market from any other make or manufacture that I ever saw. As far as the machinery went of the looms the machinery itself was, I considered, good.

(Same objection to answer.)

Int. 10. State when and where you had your last interview with M'r Sawyer in regard to the infringement on your patent and what passed.

Ans. We left the factory and returned to the office of the company. He showed me some round-braided goods and some narrow elastic
987 web about as wide as what they used on pocket-books. I told him that I made no claim on braided goods but I claimed the narrow webbing, which was made according to my patent of Division B. He then asked me if I would take $10,000 for the patent. The answer I made that it would not pay me for the cost of the present suit, and leave me minus a great many thousand dollars out of pocket. It comes to my recollection now, through giving my evidence, that I saw him once afterwards at Faxon and Elm's store. He said to me, "He has got a claim on the fabric and we must try to break it." On my return to New York I wrote a letter to M'r Joseph S. Lovering, Milk street, Boston, stating I had been down to the factory, saw the machinery which I considered good; but the manner of fitting up the looms I considered not so. He wrote me a letter in reply, dated August 24th, 1868, stating he had received my communication, adding in a postscript thanking me for my suggestion about the loom, saying they should see M'r Sawyer to-morrow and would confer with him.

(The witness reserves the right of putting in evidence the said letter of Joseph S. Lovering.)

(Same objection to the answer.)

Cross-examination by M'r Dean (de bene esse):

Cross-int. 11. Have you read your testimony in the printed record, both direct and cross?

Ans. I can't say if I have ever read the cross all through. I read some part of it some months ago, but I have not read any of the cross while in Philadelphia, nor a considerable time before.

Cross-int. 12. Is this book now shown you, containing your testimony from page 319 to page 382, and again from page 456 to 462 inclusive, the book printed in your behalf and distributed by you as the printed record in your behalf in suits in your favor against Whitehouse and others, against Nathan Nichols, and also against the Glendale Elastic Fabrics Co.?

(Objected to.)

Ans. This is a book, the pages above mentioned, printed from the manuscript of Kenneth G. White & R. E. Stilwell, and so distributed by me as a copy of my record.

988 Cross int. 13. Did you testify as recorded in said pages above referred to?

Ans. When? Where? Too indefinite to answer. I did so testify, to the best of my recollection.

Cross-int. 14. At the times and places therein stated?

(Objected to as out of the line of the direct examination.)

Ans. I believe I did.

(M'r Dean offers in evidence pages 319 to 382 and pages 456 to 462 as an exhibit, being referred to in the deposition of this witness, marked Exhibit Smith No. 1. Witness objects to a printed record being put in evidence.)

Cross-int. 15. Do you make the same answers with regard to pages in said printed record from your name in page 617 to page 665, and from page 676 to 679 inclusive?

(Witness objects to the question, and asks counsel to state his object and motive for putting such evidence on record, being not a lawful record of the original manuscript. It wants the name from the examiners.)

Ans. I believe such evidence was taken at the time according as it is printed; but whether it is printed correctly from the original manuscript in every particular I can't pretend to say.

(Witness calls on counsel to answer his question.

Counsel replies that the time fixed for taking testimony by the complainant's notice is too brief to permit his cross-examination. He therefore puts in evidence, from necessity, all complainant's former testimony included in said pages, marked Exhibit Smith No. 2.

Witness replies to the answer of counsel that there is plenty sufficient time to cross-examine me, if he will examine me under the 67th rule, and confine himself strictly to the direct examination. That on the former examination the counsel consumed nearly a week on subject-matter that was foreign to the direct examination then given; and that to agree by stipulation to admit it in all the cases, as counsel has took such a wide range, examined me on that part of my patent that was not in the suit at all under my examination.)

W'M SMITH.

989 *Deposition of William Smith.*

DECEMBER 19, 1870.

WILLIAM SMITH, being duly sworn according to law, deposes and says:

(The counsel for the defendant objects to the testimony of the com.

plainant being taken in the above-entitled cause, because he, the complainant, has already testified therein, two depositions of the complainant having already been taken during the past week, and a number of depositions of the complainant having been taken in these causes at previous times.

Witness replies to the objection of counsel that he is only going to take the same method of putting in evidence which counsel for defendant has already done in his own behalf. That witness is only going to offer in evidence de bene esse all through the evidence this day rebutting testimony to what counsel has already put in evidence, and is putting in evidence testimony in his own behalf. That witness will give his evidence as an expert de bene esse on the evidence of Rudolph Broeyer.)

Int. 1. Look at the examination of W. Smith, taken before W. Grier Hibler, commissioner, on the 18th day of September, 1869, on page' 149 and 150, from folio 582 to 585, and say if that is the evidence which you gave on that day, and if the same is true to your own knowledge.

(Objected to de bene as incompetent by counsel for defendant.)

Ans. The same is true, of my own knowledge, and I now swear to the same statement therein contained, and put the same in evidence as Exhibit 1001, L. C. C.

Int. 2. Have you read the testimony of William Smith against the Glendale Elastic Fabrics Company, given before N. A. Parks, examiner, by W'm Smith, page 511, folio 1996?

(Objected to de bene by counsel for defendants as incompetent.)

Ans. I have read such testimony, and know it to be true of my own knowledge, and testify to the same at this time, and put the same in evidence as Exhibit 1002, L. C. C.

Int. 3. Have you read the testimony of William Smith, taken before R. E. Stillwell, examiner, on the 23d day of March, 1870, page' 521 and 522, folio 2039, and is the same true?

(Objected to de bene.)

990 Ans. I know the same to be true of my own knowledge and again testify to the same, and put it in evidence as Exhibit 1003, L. C. C.

Int. 4. Please look at the evidence of William Smith taken before R. E. Stillwell, examiner, on Friday, March 25, 1870, and say whether the same is true, page 541, 542, and 543, folios 2116 to 2123.

(Objected to de bene.)

Ans. I have read the same, and know it to be true of my own knowledge and again testify to the same, and put it in evidence as Exhibit 1004, L. C. C.

Int. 5. Have you read the testimony of William Smith, taken before William Grier Hibler on the 31st day of March, 1870, page' 590, 591, and 592, folio 2310 to 2320? And say whether the same be true.

(Objected to de bene.)

Ans. I have read it; can testify that the same is true of my own knowledge, and testify again to the same, and put it in evidence as Exhibit 1005, L. C. C.

Int. 6. Have you read the testimony of William Smith, taken before R. E. Stillwell, examiner, from April 1 to April 6, 1867, from page 617 to 665, folio 2418 to 2610? And say whether the same be true.

(Objected to de bene.)

Ans. I have read the same and testify that the same is true of my own knowledge, and again testify to the same again, and put it in evidence as Exhibit 1006 L. C. C.

Int. 7. Have you read the testimony of William Smith, given before R. E. Stillwell, examiner, on April 8, 1870, page 676, 677, and 678, and 679, from folio 2653 to 2665? And say whether the same be true.

(Objected to as incompetent de bene.)

Ans. I have read such testimony, and know it is true of my own knowledge, and again testify to the same, and put it evidence as Exhibit 1007, L. C. C.

Int. 8. Have you read the testimony of William Smith, given before R. E. Stillwell, examiner, on June 24 and June 25 and June 27 and June 28 and June 30 and July 1, 1870, page 698 to 740, folio 2743 to 2910? And, if so, say whether the same be true.

(Objected to de bene.)

Ans. I have read said testimony, and know it to be true of my own knowledge, and again testify to the same, and put it in evidence as Exhibit 1008, L. C. C.

991 Int. 9. Have you read and examined the diagrams put in evidence by William Smith before R. E. Stillwell, examiner, marked Smith's Exhibit 610, Smith's Exhibit 608, R. E. Stillwell, examiner, figure 1 and 2, on June 27th, 1870?

(Objected to de bene.)

Ans. I have read and examined the same, and know the diagrams to be true of my own knowledge, 608 and 610, and again testify to the same, and put them in evidence as Exhibit, 1009, L. C. C.

Int. 10. Have you read the testimony of John Thornley before W'm Grier Hibler, examiner, the 30th and 31st day of March, 1870, on page 565 and page 566, and page 585, 586, and part of 587, from folio 2209 to folio 2216, and from folio 2289 to 2297; and, if so, is the same true?

(Objected to de bene.)

Ans. I have read the same and took the said testimony myself. I heard the said Thornley give it under oath, and can testify of my own knowledge of the truth of the evidence given at that time, from information and belief. John Thornley has gone down to New York where I cannot subpœna him to give his evidence at this time; and complainant respectfully asks the indulgence of the court to take the evidence of the said John Thornley, as his evidence is important in the case in rebuttal of the evidence of Ferdinand Doebley; and if the court admits the evidence taken at this time by the counsel for the defendants, the complainant humbly prays that the evidence of said John Thornley shall be admitted or permission given to complainant to take the evidence of said Thornley. I have made efforts to subpœna the said Thornley, but have not succeeded in so doing. The testimony of the said Thornley referred to in the last interrogatory is hereto annexed and marked Exhibit, 1010, L. C. C.

(Counsel for defendants objects to all the testimony put in this day by complainant as Exhibits 1001, to 1010, L. C. C., as incompetent, leading, and hearsay.)

Complainant's testimony as an expert.

Int. 11. Have you read the testimony of Rudolph Broeyer, taken in these suits on Friday, Dec. 16, 1870, at Philadelphia? And say as an expert if he could make the goods in the way and manner that he described in his direct and cross-examination.

992 Ans. I have read said cross-examination and the direct examination of Rudolph Broeyer, and testify as an expert that he could not make the goods as he described in his direct and cross-exam-

ination. In cross-interrogatory 78, when asked "How many splits in the reed to the inch were there in the gum-elastics you wove at Solomon Doebley's?—Answer. I don't know exactly; about 30 or 32. I am not sure of it. Cross-interrogatory 82. Was that cotton you used for ruffled suspenders double and twisted or single cotton, and say as near as you can.—Answer. I think we tried it first with double and twisted, then single; the number was 12 or 14." In answer as an expert to the above-quoted evidence that no cotton could be worked in a reed so fine as 30 or 32 splits to the inch, from the expert's own knowledge and experience in the matter that it would be very difficult to work the same cotton of No. 12 or 14 in 16 splits to the inch, and utterly impossible to work it in such reeds as he has described. In cross-interrogatory 86: "How many did you put in?—Answer. That I can't say exactly, perhaps three or maybe four according to the cotton; when I have 12 or 16, there is a difference between them. I cannot answer better." Expert replies to the above that it is so impossible for any one to make the goods in the manner he has described it in the reeds that the expert cannot conceive that he ever made the goods or saw them made. In cross-interrogatory 89: "What kind of a selvedge had these suspenders to them?—Answer. White. Interrogatory 90. How many threads or ends had you in the selvedge?—Answer. About 16. Interrogatory 91. Was those selvedge threads woven the same as the body of the fabric of a ruffled suspender?—Answer. Yes, sir.

"Cross-int. 92. How many heddle-shafts had you to make the selvedge of that suspender?

"Ans. The same as the body.

"Cross-int. 93. Did you make it in the same heddle-shafts as the body of the fabric?

"Ans. Yes, sir."

"Expert testifies that there is but one manner of making such goods as he has testified to; that is making a plain woven fabric, the warp threads interlocking with the weft threads every time the weft thread goes across the fabric. To make the goods that he testified to in the
993 manner in which he has testified is an utter impossibility; that if he was making goods according to the pattern of said expert in the way which he has testified to, that the weft thread after going across the fabric would come part back again through the same opening, nor could he make any fabric similar to any ever known or seen in the market, and would be valueless and useless if made in the manner which he has described.

"Cross-int. 97. Did you ever make any gum-elastic for shoe-goring yourself?

"Ans. No, sir.

"Cross-int. 98. What kind of a loom did you see it made in at Doebley's?

"Ans. A hand-loom.

"Cross-int. 99. What do you mean by hand-loom; had it one piece in it at a time or more?

"Ans. Six or eight.

"Cross-int. 100. How wide were the pieces made?

"Ans. About four inches, I guess.

"Cross-int. 101. What kind of cotton was used in making those goods, No. 12 or No. 20; or was it single cotton or double and twisted cotton?

"Ans. I think double and twisted cotton; I don't know what number.

"Cross-int. 102. Can't you tell if it was 12, 20, 30, or 100?

"Ans. Not 100; maybe 30's in double and twisted; I can't say the number.

"Cross-int. 109. Was the whole made with double and twisted cotton while you were there?

"Ans. Yes, sir."

Expert would testify to the witness's testimony on foregoing referring to the Defendant's Exhibit No. 2, sworn to by the witness that the weft is of single cotton and not double and twisted, similar to all the samples put in by Ferdinand Doebley of such goods and different in quality to any goods said to be made at Shallowman Doebley's at the time witness testifies they were made, and different to what his son testifies to were made by his father at such time.

"Cross-int. 104. When you were speaking about those silk and cotton suspenders, what kind of shuttle-boxes were they? Please describe them.

994 "Ans. A shuttle-box with a wheel. Every shuttle had two wheels. The wheels were not in the shuttles, though the shuttles ran over the wheels.

"Cross-int. 105. Was there in making those silk suspenders the treddles worked with the feet?

"Ans. Well, they made them by the Jacquard loom.

"Cross-int. 106. Was there only one treadle to work the Jacquard in those looms?

"Ans. I think so, but am not sure of it.

"Cross-int. 107. Do the Jacquard raise the India rubber and fall it?

"Ans. Certainly.

"Cross-int. 108. How were the shuttles thrown across the fabric by the weaver?

"Ans. It was a kind of shuttles with cogs. Maybe you never saw them.

"Cross int. 109. Did he throw the shuttle across with a handle, backward and forward?

"Ans. Yes, sir.

"Cross-int. 111. What moved the rack that moved the shuttles?

"Ans. Two treadles made on the side go on the side up on to the rack; That's all. They knocked it up and down.

"Cross-int. 112. In making those silk suspenders was the silk put on the top or bottom of the fabric?

"Ans. On the top.

"Cross-int. 113. Was silk thrown up in a figure on top of the fabric?

"Ans. Yes, sir.

"Cross-int. 114. What kind of a warp had you to make those silk suspenders? Was it cotton or silk, or both?

"Ans. Both.

"Cross-int. 115. Did the cotton warp lie at the bottom of the fabric in those silk suspenders?

"Ans. At the bottom."

The expert would state, before giving his testimony as an expert on the testimony of a witness as above stated on silk suspenders, for the cross-interrogatory 107, that the expert put the question, "Did the Jacquard raise the India rubber and fall it"? but the examiner put the word "do" instead of "did." And the expert testifies that the silk suspenders could not be made in the way and manner that the witness

995 testifies to. He, the witness, first says that the shuttles were thrown to and fro by the hand; then he says they were made in a Jacquard loom worked with a treddle by foot—the only way a Jac-

quard loom can be worked by hand is by one treddle by the foot. He again says there were two treddles made on the side up on the rack; they knocked it up and down. The expert says such an arrangement could not be worked by a man in a hand-loom, and if it could be worked would nullify the witness's testimony of throwing the shuttles backwards and forwards across the fabric. Said witness also testifies that there was a silk and cotton warp, and the cotton lay at the bottom of the fabric and the silk on the top of the fabric. Said cotton warp in the fabric must lie in the same plane longitudinally as the India rubber cords. And the said witness in cross-interrogatory No. 107 says that the India rubber rose and fell together. That being so, no kind of a fabric could be made in the manner described that is at issue in these suits. And the expert further testifies that the answers of Rudolph Broeyer in his cross-examination is so meaningless and so at variance with all knowledge of the art of weaving, and so contradictory in itself, that the expert has found the greatest difficulty with himself to give evidence easily to be understood by non-experts, although they may be practical workmen in the business.

WM SMITH.

The parties, complainant and defendant, agree, the former in person, the latter by M'r Dean, of counsel, etc., that the taking of testimony (the time being nearly expired) shall close for the present. December 19, 1870, at 6 o'clock p. m.

The complainant says the idea was not to entirely close at this point, but left for future consideration.

996 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the evidence for complainant used at the hearing of the cause of William Smith, complainant, v. Glendale Elastic Fabrics Company, defendants, in said circuit court determined.

And I further certify that an accompanying volume, having my
997 certificate of even date herewith annexed thereto, entitled "Vol. I, Pleadings, Decrees, etc.," and this volume, entitled "Vol. II, Evidence for Complainant," and another accompanying volume, also having my certificate of even date herewith annexed thereto, entitled "Vol. III, Evidence for Defendants," together contain a true copy of the record, and of all proceedings in said circuit court in said cause.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] JOHN G. STETSON,
Clerk.

998 Circuit court of the United States, district of Massachusetts.
In equity.

WILLIAM SMITH
v.
NATHAN NICHOLS.

WILLIAM SMITH
v.
THE GLENDALE ELASTIC FABRICS COMPANY.

EVIDENCE FOR RESPONDENTS.

Taken pursuant to the 67th rule of the Supreme Court of the United States in equity, as amended, before

JOSEPH GUTMAN,
Examiner, &c., at the City of New York.

NEW YORK, *November* 10, 1869—10 a. m.

Present, M'r Blake, of counsel for complainant; M'r Dean, of counsel for respondents.

Deposition of Franklin Painter.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Franklin Painter; I am 36 years of age; I reside in East Hampton, Massachusetts. I am superintendent of the Nashawannuck Company's mills.

Int. 2. Have you been engaged in the business of manufacturing
999 suspender webbing; and, if yea, for how long a time, and for what persons or corporations?

Ans. I have. I commenced in 1845 for Warner & Pritchard, at Watertown, Connecticut. I continued with them until it merged into Warren & Newton Company, in 1846, and continued with them until 1850. I commenced then for the Nashawannuck Manufacturing Company, and continued with that company from that time to the present. During the whole of the time I manufactured suspender webbing.

Int. 3. How largely were these concerns engaged in the making of suspenders?

Ans. They began small and continued to increase from time to time.

Int. 4. Can you describe the manner in which the suspenders first made by Warner & Pritchard and Warren & Newton were woven, so far as relates to the manner in which the rubber cords were covered? If yea, do so.

Ans. The rubber cords were covered by the weft threads only.

Int. 5. Look at Exhibits 1, 2, 3, J. G., j'r, and state how the manner in which the cords were covered in the suspender webbing you first made compared with the way in which the rubber cords in said exhibits are covered.

Ans. Substantially the same.

Int. 6. Did Warner & Pritchard, when you were first in their employ, make suspenders like either of said exhibits?

Ans. They did; they made them like Exhibits 1 and 2, with the exception of using native rubber in place of vulcanized.

Int. 7. Is that the only difference?

Ans. Yes; the weaving is substantially the same.

Int. 8. Was there any difference whatever in the weaving and manner in which the parts are put together?

Ans. Substantially not.

Int. 9. In the goods they made, like Exhibit 1, J. G., j'r, were the rubber cords covered only by the weft thread in the same way as in said exhibit?

Ans. They were.

1000 Int. 10. Was the selvedge cord of rubber and covered by the weft only in the same way as in said exhibit?

Ans. It was.

Int. 11. Did the Warren & Newton Company, after the merger in it of Warner & Pritchard, continue to make the same kinds of suspenders?

Ans. They did.

Int. 12. What became of the supenders made by them? Were they sold in the market?

Ans. I suppose they were.

Int. 13. Look at the three Exhibits, 1, 2, and 3, J. G., j'r, and state whether there is any difference in the way or manner in which the rubber cords are covered and confined in the fabric?

Ans. I should say not.

Int. 14. How were you employed while with the different concerns you have testified about?

Ans. I was employed in the first place in the rubber room; from there I went into the weaving room and learned to weave; after that I fixed looms, and after that I was employed as overseer. I have worked at almost all parts of the business.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 15. By what name were the goods manufactured by Warner & Pritchard like Exhibit 1, J. G., j'r, known in the market?

Ans. I do not know. I had no means of knowing at that time.

Cross-int. 16. By what name were the goods made by Warner & Pritchard like Exhibit 2, J. G., j'r, known in the market?

Ans. I do not know the name. I suppose they were designated by the numbers. I had no means of knowing the numbers.

Cross-int. 17. Who fixed the numbers of these goods for Warner & Pritchard?

Ans. I do not know, sir. I suppose it was determined by the president or directors of the company.

Cross-int. 18. Who were the president and directors of the Warner & Pritchard Co.?

1001 Ans. I could not tell. M'r Newton was the man that employed me.

(Counsel for complainant requests counsel for defendants to furnish complainant the numbers by which goods like Exhibits 1, 2, and 3, J. G., j'r, were known in the market.

Counsel for the respondents says he does not know by what numbers they were known, except that he understands from testimony already taken that the Exhibit No. 2, J. G., j'r, was known as the 48s, and that he will cheerfully give any information that he now has or may hereafter obtain.)

Cross-int. 19. When did the Nashawannuck Company commence the suspender business?

Ans. I think it was in the year 1848.

Cross int. 20. Were you then in their employ; and, if yea, in what capacity?

Ans. I was not, when they commenced. I commenced with that company in 1850, as loom fixer.

Cross-int. 21. Did you yourself ever have charge of the weaving for the Nashawannuck Co.; and, if yea, when did you begin?

Ans. I did, a portion of it. I do not recollect the exact date.

Cross-int. 22. How long was it after you went there that you began to do it?

Ans. I could not say positively.

Cross-int. 23. Was it more or less than a year?

Ans. I think it must have been more.

Cros-int. 24. Was it as much as two years?

Ans. I think it was between two and three years.

Cross-int. 25. Did you have anything to do with the weaving at the Warner & Pritchard works? I mean of the fabrics like these exhibits.

Ans. I had nothing more to do than this—they used to call on me as a boy, to hand in threads to the weaver.

Cross-int. 26. How old were you while you were at the Warner & Pritchard works?

Ans. I was a little over twelve when I commenced.

Cross-int. 27. How long were you there?

1002 Ans. I was with them while they were under that name, all of the time, and afterwards when the name was changed to Warren & Newton.

Cross-int. 28. How old were you when you left the Warren & Newton Co.?

Ans. Seventeen.

Cross-int. 29. Did you have anything to do with the weaving while you were with the Warren & Newton Co.?

Ans. Yes, sir; I learned to weave on their looms.

Cross-int. 30. How long before you left them did you learn to weave?

Ans. Some three years.

Cross int. 31. What did you weave while you were there?

Ans. Suspender webbing.

Cross-int. 32. How many different kinds of suspender webbing did the Warren & Newton Co. weave, after you became acquainted with weaving?

Ans. Two, I think—the plain, like Exhibits 1 and 2, J. G., j'r., and what was called the dice webbing.

Cross-int. 33. How many different kinds of suspenders did the Nashawannuck Co. weave, when you began to weave for them?

Ans. They made the plain, the dice webbing, and what we call the corded web.

Cross-int. 34. What do you mean by plain weaving?

Ans. We call the plain, that like Exhibits 1 and 2, J. G., j'r. We used to designate the different kinds as plain weaving, dice weaving, and corded.

Cross-int. 35. In the suspenders which you call plain weaving, how did the weft threads interlock with the warp?

Ans. The weft and warp interlocked between the rubber cords.

Cross-int. 36. Was there any difference between the manner of weaving suspenders, part of the warp of which was rubber, and those in which the warp was wholly of cotton?

Ans. I think we wove them in two ways. Usually in making non-elastic web, we have used the dicing principle.

Cross-int. 37. In weaving suspenders having cotton warp only
1003 in which the dicing principle is not used, did you weave them differently from the manner in which you wove suspenders, part of the warp of which was of rubber; and if yea, in what respect?

Ans. We substituted cotton cords for rubber cords. There was no other difference.

Cross int. 38. The rubber threads, when placed in the loom, were stretched, were they not?

Ans. They were.

Cross-int. 39. When the weaving was completed the rubber strands were rigid and unelastic, were they not?

Ans. They were.

Cross-int. 40. How was the elasticity restored?

Ans. Either by hot rollers or steam.

Cross-int. 41. How large were the rubber threads in No. 2?

Ans. I should think a little of 1-16 of an inch.

Cross-int. 42. How many dents to the inch were there in the reeds on which No. 2 were made?

Ans. Sometimes more and sometimes less.

Cross-int. 43. Give the greatest and the smallest number used in making that web, while you were with the Warner & Pritchard, Warren & Newton and the Nashawannuck Companies.

Ans. I should say from ten to twenty.

Cross-int. 44. Ten is the smallest and twenty is the greatest number, then?

Ans. Yes.

Cross-int. 45. How many rubber strands were used in fabrics like Exhibit 2, J. G., j'r?

Ans. Different numbers, according to the width and quality. From ten to fourteen.

Cross-int. 46. How many dents in the reed intervened between each rubber thread?

Ans. Sometimes one, sometimes two.

Cross-int. 47. In whose employ were you when you first became acquainted with weaving and understanding the construction of looms?

Ans. In Warren & Newton's.

Cross-int. 48. Do you consider yourself an expert in weaving and the construction of looms, for manufacturing the goods specified?

1004 Ans. I think I do.

Cross-int. 49. When did you first become so?

Ans. I first began in 1846 and 1847. I do not know that I should have been considered an expert then.

Cross int. 50. When did you first acquire so full and accurate a knowledge of the art of weaving these fabrics that you became an expert in it?

Ans. I could weave the fabrics in 1847.

Cross-int. 51. Answer that question fully, if you please.

Ans. I say that in 1847 I could start a loom, draw in the warps and run it.

Cross-int. 52. During the time that you first went in to learn the business of a weaver, before 1847, and from 1847 to 1850, please to describe the construction of the crank shaft and the cam shaft, and how many revolutions the crank shaft went around to the cam shaft's one?

Ans. The crank shaft was a straight shaft with cranks at either end outside; the cam shaft was geared to the crank shaft; the crank shaft making four revolutions to the cam shaft's one.

Cross int. 20. Were you then in their employ; and, if yea, in what capacity?

Ans. I was not, when they commenced. I commenced with that company in 1850, as loom fixer.

Cross-int. 21. Did you yourself ever have charge of the weaving for the Nashawannuck Co.; and, if yea, when did you begin?

Ans. I did, a portion of it. I do not recollect the exact date.

Cross-int. 22. How long was it after you went there that you began to do it?

Ans. I could not say positively.

Cross-int. 23. Was it more or less than a year?

Ans. I think it must have been more.

Cros-int. 24. Was it as much as two years?

Ans. I think it was between two and three years.

Cross-int. 25. Did you have anything to do with the weaving at the Warner & Pritchard works? I mean of the fabrics like these exhibits.

Ans. I had nothing more to do than this—they used to call on me as a boy, to hand in threads to the weaver.

Cross-int. 26. How old were you while you were at the Warner & Pritchard works?

Ans. I was a little over twelve when I commenced.

Cross-int. 27. How long were you there?

1002 Ans. I was with them while they were under that name, all of the time, and afterwards when the name was changed to Warren & Newton.

Cross-int. 28. How old were you when you left the Warren & Newton Co.?

Ans. Seventeen.

Cross-int. 29. Did you have anything to do with the weaving while you were with the Warren & Newton Co.?

Ans. Yes, sir; I learned to weave on their looms.

Cross-int. 30. How long before you left them did you learn to weave?

Ans. Some three years.

Cross int. 31. What did you weave while you were there?

Ans. Suspender webbing.

Cross-int. 32. How many different kinds of suspender webbing did the Warren & Newton Co. weave, after you became acquainted with weaving?

Ans. Two, I think—the plain, like Exhibits 1 and 2, J. G., j'r., and what was called the dice webbing.

Cross-int. 33. How many different kinds of suspenders did the Nashawannuck Co. weave, when you began to weave for them?

Ans. They made the plain, the dice webbing, and what we call the corded web.

Cross-int. 34. What do you mean by plain weaving?

Ans. We call the plain, that like Exhibits 1 and 2, J. G., j'r. We used to designate the different kinds as plain weaving, dice weaving, and corded.

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Ans. I could weave the fabrics in 1847.

Cross-int. 51. Answer that question fully, if you please.

Ans. I say that in 1847 I could start a loom, draw in the warps and run it.

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Ans. The crank shaft was a straight shaft with cranks at either end outside; the cam shaft was geared to the crank shaft; the crank shaft making four revolutions to the cam shaft's one.

Cross-int. 53. Now please to describe the number of cams you had upon the cam shaft and their shape; whether they were 1-4 cams, 1-2 cams or 3-4 cams, or a mixture of all three?

Ans. There were four cams on the shaft all alike, called 1-4 cams.

Cross-int. 54. How many rocking poles had you attached to those looms, that made these kinds of goods that you have been speaking of?

Ans. From two to six.

Cross-int. 55. How many rocking poles did you use in making fabrics like Exhibit 2, J. G., j'r?

Ans. Six.

Cross-int. 56. You were speaking of corded fabrics; please to describe the manner of the construction of those fabrics.

Ans. It is a double cloth bound together by what we call binders, forming a case to receive the rubber.

Cross-int. 57. You mean to say, then, that in the corded fabrics the India rubber lay in a tube or sheath?

Ans. Yes, sir.

Cross-int. 58. In making a round selvedge to suspender webb-
1005 ing, please describe how many extra heddle shafts do you use for making the body of the corded fabric?

Ans. We used four for making the round selvedge and the body of the corded web. To make the whole fabric we have to use six shafts; four for the round selvedge and the body, and two for the binders, to bind it together. I am speaking of a fabric like Exhibit 2, J. G., j'r. I understand it takes seven shafts to make Exhibit 2, J. G., j'r.

FRANKLIN PAINTER.

Subscribed and sworn to before me, this 10th November, 1869.

JOSEPH GUTMAN, J'R,
Examiner.

Deposition of George Pritchard.

Direct examination by M'r Dean, of counsel for respondents.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is George Pritchard. I am 52 years of age. I reside at Waterbury, Connecticut. I am a manufacturer and salesman.

Int. 2. Have you ever been engaged in the business of manufacturing suspenders? If yes, where, how long, and under what firms or names?

Ans. I have been so engaged for myself since the beginning of 1845, under the name of Warner & Pritchard, the firm being composed of M'r Warner, myself and my brother. That firm existed a year or so, and then was merged into the corporation known as the Warren & Newton Manufacturing Company. I was employed in that company as one of the superintendents from 1845 to about 1858, when that company was merged into what is known as the American Suspender Co. I also worked for the Hotchkiss & Pritchard Manufacturing Co., before the formation of the Warner & Pritchard Co., I should say from 1843 to January, 1845, as a mechanic, building and repairing looms and helping in different ways about the shop in other work.

Int. 3. What was the business of the Hotchkiss & Pritchard Manufacturing Co.?

1006 Ans. Making web, and manufacturing it into suspenders.

Int. 4. What was the business of Warner & Pritchard, and of the Warren & Newton Manufacturing Co.?

Ans. Manufacturing webbing and making it into suspenders.

Int. 5. Did all the concerns manufacture elastic suspenders made elastic by the used of India rubber?

Ans. They did.

Int. 6. Look at Exhibits 1 and 2, J. G., jr., and state how the goods made by the Hotchkiss & Pritchard Manufacturing Company compared with them, as to the method of manufacturing or manner of weaving?

Ans. I should think they were the same.

Int. 7. Did they make such suspenders while you were in their employ from 1843 to 1845?

Ans. I know they made them in 1844.

Int. 8. How were the rubber cord warps in the webbing made by them covered at the top and bottom?

Ans. By filling threads.

Int. 9. How were they held in the fabric; I mean how were the filling threads confined against the rubber cords?

Ans. By warp threads lying between the rubber threads.

Int. 10. Did Hotchkiss & Pritchard at that time make elastic suspender webbing with the selvedges like Exhibits 1 and 2, J. G., jr.?

Ans. I am not sure; Hotchkiss & Merriman did.

Int. 11. When did Hotchkiss & Merriman make it?

Ans. In 1844.

Int. 12. Look at Exhibit 3, J. G., jr., and compare it with Exhibits 1 and 2, J. G., jr., and state whether there is any difference as to the manner and means by which the rubber st'ands are covered at top and bottom, and by which the filling is held against the rubber strands.

Ans. I should think they were the same.

Int. 13. To what extent did the Hotchkiss & Merriman Co. manufacture elastic suspender webbings like Exhibits 1 and 2, J. G., jr.?

Ans. I should say they had about six looms running on these
1007 goods, and each of these looms would produce from 8 to 12 gross yards per week.

Int. 14. Give the history of the Hotchkiss & Merriman Manufacturing Co.

Ans. They were a corporation, incorporated about 1843, in the town of Waterbury, Connecticut. It was named after Julius Hotchkiss and Charles B. Merriman, the principal stockholders. They continued until about 1858, when they also were merged in the American Suspender Co.

Int. 15. To what extent did Warner & Pritchard manufacture elastic suspenders, like Exhibits 1 and 2, J. G., jr.?

Ans. In 1845 they had four looms started; the looms would manufacture from 8 to 12 gross yards each per week; and then we increased from year to year until we ran 30 looms.

Int. 16. What became of the goods that were made by the several concerns that you were connected with?

Ans. They were mostly sold in New York, Philadelphia, and Boston.

Int. 17. How long did said suspender-webbings, like Exhibits 1 and 2, J. G., jr., continue to be made and sold?

Ans. From 1844 to 1849.

Int. 18. Did they continue to be made by the American Suspender Co.?

Ans. They did.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 19. By what names or numbers were suspenders, like Ex-

Cross-int. 53. Now please to describe the number of cams you had upon the cam shaft and their shape; whether they were 1-4 cams, 1-2 cams or 3-4 cams, or a mixture of all three?

Ans. There were four cams on the shaft all alike, called 1-4 cams.

Cross-int. 54. How many rocking poles had you attached to those looms, that made these kinds of goods that you have been speaking of?

Ans. From two to six.

Cross-int. 55. How many rocking poles did you use in making fabrics like Exhibit 2, J. G., j'r?

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Ans. From 1844 to 1849.

Int. 18. Did they continue to be made by the American Suspender Co.?

Ans. They did.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 19. By what names or numbers were suspenders, like Ex-

hibits 1, 2, and 3, J. G., jr., known and sold in the market when they were made and sold by the Warner & Pritchard Co., the Warren & Newton Co., the Hotchkiss & Pritchard Co., and the Hotchkiss & Merriman Co.?

Ans. All the companies had different names and different numbers.

Cross-int. 20. Give them, then.

Ans. I do not remember the numbers. I think we commenced at 45.

1008 Cross-int. 21. When the Hotchkiss & Pritchard Co. merged in the Hotchkiss & Merriman Co., were the numbers of the goods changed?

Ans. I do not know; I should think not.

Cross-int. 22. In your answer to the 94th cross-interrogatory, in your testimony in the suit of William Smith v. J. T. Whitehouse and others, you stated that you thought you could produce samples like goods of Exhibits 1, 3, 4, and 5, referred to in that suit, manufactured by some of the companies with which you were connected prior to 1853. Can you do so now, and will you produce them?

Ans. I can and will; I have not them with me now.

Adjourned to 2.30 p. m.

2.30 P. M.

Present, counsel as before.

Cross-int. 23. Have you found the samples asked for in the last question?

Ans. I have, sir.

Cross-int. 24. Will you produce them?

Ans. I will.

(Witness produces samples.)

Cross-int. 25. Please produce the sample like Exhibit 1, J. G., jr.

(Witness produces sample, which is marked Exhibit 4, J. G., jr.)

Cross-int. 26. When, where, and by whom was Exhibit 4, J. G., jr., made?

Ans. In 1845–6, by the Warner & Pritchard Manufacturing Co., at Oakville, Conn.

Cross-int. 27. Where has it been ever since?

Ans. In our attic where we put our waste web.

Cross-int. 28. When did you find it?

Ans. The week after I gave my last testimony in the other case.

Cross-int. 29. How do you know that these goods were made in 1844?

Ans. In 1845 or 1846, I said.

Cross-int. 30. How do you know it?

Ans. Because we abandoned making those goods in 1847.

1009 Cross-int. 31. Did you not state in your answer to the 17th question on your direct examination, that suspender-webbings like Exhibits 1 and 2, J. G., jr., continued to be made from 1844 to 1869?

Ans. There is a difference in these two webs.

Cross-int. 32. By the 25th cross-interrogatory you were asked to produce a sample like Exhibit 1, J. G., jr., and you produced Exhibit 4, J. G., jr., did you not?

Ans. Yes, sir.

Cross-int. 33. Do you mean by the answer to cross-question 31 to state that Exhibit 4, J. G., jr., is not like Exhibit 1, J. G., jr.?

Ans. Produce Exhibit 2, J. G. jr., and I will answer the question.

There is a difference between Exhibit 1, J. G., jr., and Exhibit 2, J. G., jr.

Cross-int. 33*a*. Question repeated.

Ans. I do not; I can make it very clear to you if I can explain it in my own way. In 1845 we started our looms like Exhibit 4, J. G., jr. We continued to run those looms about two years. We then started looms like Exhibit 2, J. G., jr. After getting that web into market, it was liked better than Exhibit 4, J. G., jr., having a round selvedge. We then changed our looms from Exhibit 4, J. G., jr., on to web like Exhibit 2, J. G., jr., and we continued to run that kind.

Cross-int. 34. After you began to make and sell goods like Exhibit 2, J. G., jr., did you cease to make and sell goods like Exhibit 4, J. G., jr.?

Ans. We did.

Cross-int. 35. Then it is not true, as stated by you in your answer to the 17th question, that goods like Exhibit 1, J. G., jr., were made from 1844 to 1869, is it?

Ans. With the exception of the selvedge; the selvedge is different.

Cross int. 36. Where has Exhibit 4, J. G., jr., been kept in your garret since 1844?

Ans. I think in barrels, bins, and boxes.

Cross-int. 37. Has it been exposed to the light?

Ans. Yes, as much as it could be, packed in boxes.

Cross-int. 38. Did you find Exhibit 4, J. G., jr., manufactured into suspenders?

1010 Ans. Parts of suspenders; yes, sir.

Cross int. 39. How many suspenders like Exhibit 4, J. G., jr., did you find in your attic?

Ans. I found none finished. I found some that were part finished.

Cross int. 40. Can you explain why the suspenders, or parts of suspenders, that you found in your attic, like Exhibit 4, J G., jr., were not finished and put on the market?

Ans. Because they were not fit to put on; they were too poor.

Cross int. 41. In what respect were they too poor?

Ans. In the web. It was poor web, damaged in the web.

Cross-int. 42. Where did you get the cotton used in the warp of Exhibit 4, J. G., jr.?

Ans. I do not know, sir.

Cross int. 43. What kind of rubber is the rubber in Exhibit 4, J. G., jr.?

Ans. Pure Para rubber.

Cross-int. 44. Did you put the cotton into the warp of Exhibit 4, J. G., jr., in the condition in which you purchased it, or did you prepare it before putting it in yourself?

Ans. We purchased it in yarns or threads, and then colored and bleached it ourselves.

Cross-int. 45. Is that all you did to it?

Ans. Yes, sir.

Cross-int. 46. By what manufacturing company were these goods like Exhibit 4, J. G., jr., made?

Ans. By Warner & Pritchard and the Warren & Newton Co.

Cross-int. 47. Where are the books of those companies?

Ans. I think M'r Newton has some of them.

Cross-int. 48. By whom were they kept?

Ans. They were first kept by M'r Frederick Hurd, I think. For the last two or three years of our existence they were kept by M'r Newto

Cross-int. 49. Will you produce and annex to your deposition a speci-

men of the goods made in 1844, 1845, or 1846, like Exhibit 2, J. G., jr.?

(Witness produces sample, which is marked Exhibit 5, J. G., jr.)

1011 Ans. I will not swear that that was made before 1847. It is the oldest sample I know of.

Cross-int. 50. Will you swear that it was made as early as 1847?

Ans. I will.

Cross-int. 51. How do you know that it was as early as 1847?

Ans. At about that time we changed our styles of machinery again and put our looms on to goods like Exhibit 6, J. G., jr.

Cross-int. 52. Then it is not true, as stated by you in your answer to the 17th question, that goods like Exhibit 2, J. G., jr., continued to be made from 1844 to 1869?

Ans. I said with the exception, perhaps, of a year or two. We were changing our patterns constantly. They were similar goods, but patterns changed.

Cross-int. 53. Did or did not goods like Exhibit 2, J. G., jr., continue to be made from 1844 to 1869?

Ans. They did; with the exception, perhaps, of intervals of a few months or a year from time to time.

Cross-int. 54. How can you be sure that Exhibit 5, J. G., jr., was not made after the last of these intervals, instead of before the first?

Ans. By the patterns, the colors and arrangement of the patterns, the style.

Cross-int. 55. How many different styles or patterns of goods have you made between 1844 and 1869?

Ans. Our last number is 900, I believe. We have, I suppose, made 900 different styles, may be more or less. I think as many as that.

Cross-int. 56. Can you fix the date of each style or pattern?

Ans. No, sir; except certain webs.

Cross-int. 57. What is there about the style or pattern of Exhibit 5, J. G., jr., by which you fix its date?

Ans. Only from looks and memory.

Cross-int. 58. Do you swear that you can single out this style from 900 different styles of goods covering the period from 1844 to 1869, and fix the date of that style?

Ans. I know that was the second style of suspender that we made, and we ran it for a short time, perhaps a year or two, and have
1012 not made that style since. A similar web we make, but not that style or pattern.

Cross-int. 59. Can you mention anything peculiar in this style which enables you thus to recall it?

Ans. The style of trimming is peculiar to the time we made this—the leathers. I could probably give you the numbers if I had the time to do it.

Cross-int. 60. Give us the numbers, and take your time to do it.

Ans. I cannot give them without examining my books in Connecticut. I am not sure that I can give the numbers then, but I think so.

Cross-int. 61. Will you examine your books and give us the numbers and state how soon you will do it?

Ans. I will not promise to give the numbers. I will examine my books. I could not say how soon I will do it. I have not time to do it at present.

(Counsel for complainant requires the witness to produce and annex to his answer to the foregoing question, extracts from the books showing the numbers in question within one week.)

Cross-int. 62. Is the style of trimming of Exhibit 5, J. G., jr., so distinct from the other 899 styles of trimming that you can recall the date of that while you cannot recall the date of the others?

Ans. That is the first style of trimming that we made. We abandoned that style of trimming, I think, within 3 years after commencing.

Cross-int. 63. What kind of rubber did you use in these goods?

Ans. Pure Para.

Cross-int. 64. By whom were the purchases of cotton made for Exhibits 4 and 5, J. G., jr.?

Ans. By M'r Warren; Alanson Warren, I think.

Cross-int. 65. Are you an expert in weaving?

Ans. No, sir.

Cross-int. 66. Are you an expert in fitting up looms, as a mechanic for weaving suspenders?

Ans. I did that somewhat, 15 or 20 years ago.

Cross-int. 67. Please answer that question more fully, and say if you are, or are not, an expert in fitting up machinery for suspender looms?

1013 Ans. I am not.

Cross-int. 68. As you are not an expert either in weaving or fitting up looms for suspender webbing, how do you arrive at your knowledge to give testimony as an expert on the fabric?

Ans. I know something about looms and something about fabrics, but I do not call myself an expert.

Cross-int. 69. What do you yourself consider an expert, either in weaving the fabrics or fitting up the looms for weaving them, to be?

Ans. I suppose an expert in weaving is a weaver who perfectly understands his business—a perfect weaver I would consider an expert in weaving. I should say a loom builder was an expert in building looms.

Cross-int. 70. You not being an expert in weaving, how could you answer and testify knowingly about the fabrics that you have been cross-examined and examined upon?

Ans. I have been amongst the looms and amongst the fabrics so long that I know something about them. I know something about the construction of looms—about the shafts and about the cams. I have worked at repairing looms.

Cross-int. 71. Please state in weaving Exhibit 4, J. G., jr., how many cams you had on your cam-shaft, what was their shape, what was their width, what name they went by, how many heddle-shafts you had, how many rocking poles were attached to the loom, and how many rocking poles were put in operation in weaving the Exhibit 4, J. G., jr.?

Ans. We had 4 cams on the cam-shaft. They were of an oval shape, about 5 inches in width; weavers call them 1-4 cams. We had four heddle shafts. There were two rocking-poles attached to the loom, and two rocking-poles were put in operation in weaving the fabric.

Cross-int. 72. How many revolutions did the crank-shaft make while the cam-shaft made one?

Ans. I am not sure, but I think four.

Cross-int. 73. Are you not aware that a cam is always derived from a segment of a circle?

Ans. I am not sufficiently familiar with it.

1014 Cross-int. 74. Were Exhibits 5 and 6, J. G., j'r, made on the same kind of looms with the same kind of cam-shafts and crank-shafts?

Ans. They were.

Cross-int 75. And the same number of cams?

Ans. Yes, sir.

Cross-int. 76. How many heddle-shafts did you use in making Exhibit 5, J. G., j'r, spoken of?

Ans. I think, six.

Cross-int. 77. How many rocking-poles did you put in operation in making that?

Ans. I am not sure; I think, six.

Cross-int. 78. Did the lathe beat up at every pick of the woof?

Ans. It did.

Cross-int. 79. What amount of elasticity had these goods in them when they were finished?

Ans. I should think about one quarter.

Cross-int. 80. Look at Exhibit 4, J. G., j'r, and say if you think it ever had any more elasticity in it than it has now?

Ans. I think it did.

Cross-int. 81. Please state state your reason for it.

Ans. The rubber now is cold. I think if you put it through hot rollers in the state it is now, it would have more elasticity.

Cross-int. 82. Please look again at Exhibit 4, J. G., j'r, and say if the weft threads are not close together.

Ans. I think it could be shrunk more.

Cross-int. 83. Can you state where the rubber was procured of which Exhibit 4, J. G., j'r, was made?

Ans. At Oakville, at Warren & Newton's manufactory.

Cross-int. 84. When was the first that you saw rubber cut so fine as this in Exhibit 4, J. G., j'r,? When did you first notice it?

Ans. As late as 1844.

Cross-int. 85. Can you state whom it was cut and made by?

Ans. Hotchkiss & Merriman Manufacturing Co.

Cross-int. 86. Please look at Exhibit 6, J. G., j'r, and say how many rocking-poles and heddle-shafts you employed in making that description of fabric?

1015 Ans. I am not expert enough to answer that question.

Cross-int. 87. In these three exhibits, 4, 5, and 6, J. G., j'r, did the warps interlock at every revolution of the crank-shaft?

Ans. I am not sure about that.

Cross-int. 88. In making these exhibits, did you ever see the lathe come backward and forwards, and the shed all open and standing still?

Ans. It is always open when the shuttles pass through.

Cross-int. 89. And every time the shuttle passed through, the shed closed and interlocked?

Ans. I think so.

Direct examination resumed by M'r Dean, of counsel for respondents:

Int. 90. Did different manufacturers have their own numbers for the same style of web, so that one kind of elastic suspender webbing would be known in the market by different numbers, and different kinds by the same numbers?

Ans. Yes, sir.

(Counsel for complainant objects to the receipt of this deposition as evidence in this suit of William Smith v. The Glendale Elastic Fabrics Company as immaterial to the issue there raised.)

GEO. PRITCHARD.

Subscribed and sworn to before me this 10th November, 1869.

JOSEPH GUTMAN, J'R,
Examiner.

Deposition of John N. Wilkins.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John N. Wilkins; I am 36 years of age; I reside at Philadelphia, Pa.; I am an importer of shoe-findings—shoe stuffs. I have been in that business since 1849. I went to Philadelphia in
1016 1849. In 1850 and 1851 we commenced the importation particularly of shoe goods. I was at that time a clerk for Isaac Barton & Co. I think we imported woven elastics in 1851. I could not refresh my memory for the reason that the old books of Isaac Barton & Co. have been destroyed. After we had imported those goods for a time we heard of an article purporting to be made by a M'r Smith, and he subsequently called on us and showed us his goods, and endeavored to explain to us how much superior his were to those we were importing. The difference that he was mentioning, at that time especially.

(Narrative form objected to.)

Int. 2. What difference did he point out between the goods imported by you and those he claimed to make?

(Objected to, as immaterial and incompetent to show what M'r Smith's invention was.)

Ans. Those that we were importing were a Union web, and in cutting them with a knife in the shape of a gore to put in a shoe, they would curl up, whilst his would not. I do not recollect of his making any claim to a patent at that time; he never mentioned that to us. He was selling the goods as a superior article to the foreign goods.

Int. 3. Was there any difference, so far as you could tell, as to the way in which the rubber strands were covered between the union goods then imported by you and M'r Smith's goods?

Ans. The face of the goods appeared the same, but there was a difference in the way they were woven on the back.

Int. 4. Had you been importing single silk and cotton webbing for shoe gores before this conversation with M'r Smith?

Ans. Yes; I cannot undertake to place the date; I know it was some considerable length of time before M'r Smith's goods were offered in the Philadelphia market; it may have been six months; it may have been a year.

Int. 5. How long after M'r Smith first called upon you in reference to his goods before he spoke of having a patent?

(Objected to as immaterial.)

Ans. I can fix the time more by circumstances than by an exact time. I do not recollect his ever having claimed a patent until after Day claimed that he had a patent for them.

1017, 1018 Int. 6. Did he at any time explain to you what his invention was, or what he claimed his invention to be?

(Objected to as immaterial and incompetent.)

Ans. Yes; he did it on more than one occasion. On one occasion he took the goods from our counter or shelf, I don't know which, and showed us what constituted his patent. At another time he sent some individual to purchase a yard (I should have been glad to have sold him a piece or two), and he brought that in and claimed it as his patent—it was a piece of the Union goods, silk-faced and cotton-backed.

Int. 7. What reason did he give for making a claim on the Union gore?

(Objected to as immaterial.)

Ans. The main reason seemed to be that it could not be woven except on his peculiar patent.

Int. 8. Did he state what his patent was?

(Objected to as immaterial.)

Ans. His patent was for the machinery on which this kind of goods was woven.

Int. 9. Did M'r Smith say anything regarding the single silk or cotton webbing for shoe gores, and if yes, what did he say?

(Objected to as immaterial.)

Ans. He claimed the patent only for the Union gore; the silk both sides, or the cotton both sides, I understood he made no claim for.

Int. 10. Did he, at any time, take down from your shelves, or point out in your store, any goods, claiming that one was an infringement of his patent because made on his machinery, and making any disclaimer as to others?

(Objected to as immaterial.)

Ans. Yes; he claimed the silk-face and cotton-backed gore only as his patent, and that the cotton both sides and silk both sides were not an infringement.

Int. 11. Look at Exhibits 7, 8, and 9, J. G., j'r, and state which, if either, he claimed to be within his patent, and which, if either, he said he made no claim on.

(Objected to as immaterial.)

Ans. Exhibit 9, J. G., j'r, he claimed. Exhibits 7 and 8, J. G., j'r., he made no claim on.

1019 Int. 12. Did you have frequent conversations with M'r Smith regarding his claims at different times, and did he, on any of these occasions, bring in samples of goods with different names attached to them?

(Objected to as immaterial.)

Ans. I have frequently had conversations with him in reference to his patent, but don't remember his having brought in the goods except on one occasion. He had these goods with different names attached to them. The names were pinned on the pieces—Isaac Barton & Co., Paine & Co., and Johns, I think.

Int. 13. On any one of these occasions did he make any claim differing from what you have already stated?

(Objected to as immaterial.)

Ans. No, sir.

Cross-examination waived by complainant's counsel.

JOHN N. WILKINS.

Subscribed and sworn to before me this 10th November, 1869.

JOSEPH GUTMAN, J'R,
Examiner.

Deposition of Redman Cooper.

Direct examination by M'r Dean, of counsel for respondents.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Redman Cooper. I am 51 years of age. I reside at Philadelphia. I am a merchant. I am an importer of shoe findings.

Int. 2. Have you ever had any conversation with M'r Smith respecting

the bringing of a friendly suit against your firm? If so, state what that conversation was.

(Objected to as immaterial.)

Ans. I had; M'r Smith came into the counting-room one morning, about four months since, and stated that, as he understood we did not want to infringe any right that he might have, he asked if we would not allow him to take judgment against us in a friendly suit. I re-

1020 plied to him that we did not want that. We did not want to sell his goods unless we had a perfect right to do so, and stated to him that he had the right to sue if he wished to, but we would defend it, and suggested to him to commence the action in Boston, where they had more evidence than we had. His reply to that was, "If I commence action there, I shall never get it ended." I told him I thought differently, and suggested the Glendale Company, and told him that I thought that they were ready and anxious to try it at any time. I think he replied to that that he thought not, and then repeated he saw we were not willing to have an amicable suit, and I said no.

Int. 3. During the giving of your testimony here, what has M'r Smith said regarding you?

(Objected to as immaterial.)

Ans. He said I was lying; that he had never made any such proposition.

Int. 4. Did M'r Smith make any offers by way of inducement at any time to induce your firm to permit a friendly suit to be brought?

(Objected to as immaterial.)

Ans. To me he did not.

Int. 5. Did he ever say anything to you about being an agent for the sale of his goods?

(Objected to as before.)

Ans. No, sir; not to me personally.

Int. 6. Did M'r Smith at any time state to you, or in your presence, what kind of elastic shoe gorings he claimed to be an infringement of his patent?

(Objected to as before.)

Ans. Yes, sir; he claimed the Union to be an infringement. It was so long ago that I cannot at present recollect the reasons he gave.

Int. 7. What did he say with regard to the all cotton or all silk webs, like Exhibits 7 and 8, J. G., j'r?

(Objected to as before.)

Ans. He said he did not claim them as an infringement. It was only the Union.

1021 Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 8. When did the first-named conversation take place?

Ans. I should think about four months since. It may have been longer than that. It must have been longer. It was in the spring, I think.

Cross-int. 9. May it not have been in the fall?

Ans. I think not. My impression strongly is that it was in the spring. If necessary, I can furnish the dates to within 30 days of the time.

Cross-int. 10. When did you hear M'r Smith say that he did not claim Exhibits 7 and 8, J. G., j'r?

Ans. I should think it was 10 or 12 years ago.

(The entire deposition is objected to as evidence in the suit against the Glendale Elastic Fabrics Company.)

REDMAN COOPER.

Subscribed and sworn to before me this 10th day of November, 1869.
JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to November 11, at 10 a. m.

NEW YORK, *November* 11, 1869—10 a. m.

Deposition of Isaac E. Newton.

Present, counsel as before.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Isaac E. Newton. I am 60 years of age. I reside at Waterbury, Conn. I am a manufacturer. I have been a manufacturer of suspenders since 1845. I was first connected with the Warner & Pritchard Manufacturing Co., an incorporated company, and
1022 commenced business in January, 1845, and it was succeeded by the Warren & Newton Co. in about the middle of February, 1846. The Warner & Pritchard Co., and the Warren & Newton Co., manufactured various numbers of suspenders, made from web, woven like Exhibit 4, J. G., j'r. They were elastic suspenders. There was such a company as the Hotchkiss & Merriman Manufacturing Co. at Waterbury, Connecticut, carrying on business at that time there. They made a similar kind of suspender before the Warner & Pritchard Co. was established. The suspenders made by these companies were sold in the market. The Warner & Pritchard Co. ran four looms in making that kind of suspenders. The Warren & Newton Co. commenced with the same four looms, and went on and added to them. They continued to make that kind of goods, it might have been a year or two years. I cannot say how long. We soon made another kind of goods, with a round selvedge, like Exhibit 2, J. G., j'r, which took much better, and we continued on with that, making them more or less, I should think, as long as we continued in the business—the latter part of the time we did not make them. I should say we made them for 8 or 10 years. Each loom would turn out from 1,000 to 1,500 yards of that kind of goods per week. In those elastic suspenders that we made, like Exhibits 2 and 4, J. G., j'r, the rubber cords were covered only by the filling on both sides, and the filling threads were held by the thread warps, which lie between the rubber cords, crossing each other at every pick.

Int. 2. Look at all the Exhibits J. G., j'r, from 1 to 9, inclusive, and state whether there is any substantial difference between them, so far as the arrangement and the relation of the rubber cords and warp and filling threads are concerned.

Ans. There is none up to Exhibit 8, J. G., j'r. There is no material difference in Exhibit 9, J. G., j'r, except that it is woven with a double shuttle. With the exception of Exhibit 9, J. G., j'r, all of them could be woven on the same loom. All the difference in the weaving of the different exhibits consists in the springing of the harness.

Int. 3. State your experience as a weaver.

Ans. I have set up the warps and warped them; drawn them into the heddles, into the reeds, mounted the loom and run it. I had
1023 charge of the weaving department—that is, I was what they call the boss weaver of the Warren & Newton Co. for perhaps a year and a half—perhaps two years. I am now the superintendent, and have the oversight of the manufactory of the American Suspender Co.'s works.

I superintend the manufacturing, though I have a foreman under me. The American Suspender Co. was formed by the merger of the Hotchkiss & Merriman Manufacturing Co., the Warren & Newton Manufacturing Co., and the Hitchcock Co., I think in 1857.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 4. Can you state the numbers by which Exhibits 4, 5, and 6, J. G., j'r, were known in the market?

Ans. I cannot, precisely.

Cross-int. 5. State as nearly as you can.

Ans. Exhibit 4, J. G., j'r, I think, was 61. Those goods and every kind, when its pattern was changed, received a different number. We often make several numbers of the same kind of web.

Cross-int. 6. Please state how many revolutions the crank shaft went round to the cam shaft's one, in the loom on which you made such exhibits.

Ans. Four times.

Cross-int. 7. Please state how many cams you had upon the cam-shaft on those looms.

Ans. Four.

Cross-int. 8. Was that all that you had upon them?

Ans. It was, for this weaving.

Cross-int. 9. Had you any tappets upon the cam-shaft?

Ans. We had two.

Cross-int. 10. What were they on the cam-shaft for?

Ans. For driving the shuttles.

Cross-int. 11. Please state what kind of cams you had on the cam-shaft—whether they were $\frac{1}{4}$, $\frac{1}{2}$, or $\frac{3}{4}$ cams.

Ans. $\frac{1}{4}$.

Cross-int. 12. Please state the length of them from the axis of the cam-shaft, and the breadth of them.

1024 Ans. I should think, from the center to the outside, was about six inches. We had different sizes, from six to eight inches in length.

Cross-int. 13. How in breadth?

Ans. About an inch thick.

Cross-int. 14. Please give the proportions of the cam in length, breadth, and thickness.

Ans. Those for Exhibit 4, J. G., j'r, would be about 8 inches from the center of the shaft to the outside of the cam; the breadth was one-quarter of a circle; the dimension in inches would depend on the size of the cam.

Cross-int. 15. Mention it in inches.

Ans. They would be about six inches, if it was brought out full to the outside circle.

Cross-int. 16. Please state and give the length, breadth, and dimensions of the cams on which Exhibit 5, J. G., j'r, was made.

Ans. The same sized cams would make Exhibit 5, J. G., j'r.

Cross-int. 17. Please look at Exhibit 6, J. G., j'r, and give the length, breadth, and dimensions of the cams used to weave that web.

Ans. The same sized cams and the same number would weave that web.

Cross int. 18. How many rocking-poles had you attached to looms that made Exhibits 4, 5, and 6, J. G., j'r?

Ans. For Exhibit 4, J. G., j'r, two; for Exhibit 5, J. G., j'r, six rocking-poles; for Fxhibit 6, J. G., j'r, five rocking-poles.

Cross-int. 19. Please state how, in making Exhibit 4, J. G., j'r, the harness was attached to the rocking-poles, and from the harness to the treddle.

Ans. The rocking-pole had arms towards each end; from the end of those arms was attached a wire, and that to the heddle—the under side of the harness to the treddle, by a rod or strap, either.

Cross-int. 20. What part of the harness did you attach to the first treddle of the loom in making Exhibit 4, J. G., j'r?

Ans. We attached the front harness.

Cross-int. 21. Please state what you call the front harness.

Ans. The one nearest the lathe, as you stand in front of the loom.

1025 Cross-int. 22. Please state how much of the front harness you attached.

Ans. It was attached by two rods or straps.

Cross-int. 23. How much did you attach?

Ans. What I call the harness is one heddle. We attached the whole of it.

Cross-int. 24. How much of the harness did you attach to the second treddle of the loom, operated by the second cam?

Ans. The whole of the next leaf or heddle-shaft was attached. In weaving this Exhibit 4, J. G., j'r, the first leaf was attached to the first and third treddles; the second leaf to the second and fourth treddles.

Cross-int. 25. What use did you make of a second rocking-pole in making Exhibit 4, J. G., j'r?

Ans. It was put in to balance the rubber shaft—the rubber harness.

Cross-int. 26. Please state how that second rocking-pole was attached to the first, second, third, and fourth treddles of the loom.

Ans. It was attached to the second and fourth.

Cross-int. 27. What became of the rubbe shaft when the first and third treddles were in operation?

Ans. The shaft was raised, was up.

Cross-int. 28. Please state how long it remained raised in the operation.

Ans. It remained up till the next pick, till the shaft turned quarter around.

Cross-int. 29. In the second and fourth treddle, which you before mentioned, how did they operate upon the rubber shaft?

Ans. They let the rubber shaft rise.

Cross-int. 30. In what manner did they let the rubber shaft rise?

Ans. There being no rod to take it down, the counterbalance would raise the rubber shaft.

Cross-int. 31. In the revolutions of the crank-shaft, causing the movements of the lathe backwards and forwards, did the warps interlock at every movement backwards and forwards, or what part of the warps did interlock with the weft threads?

1026 Ans. In Exhibit 4, J. G., j'r, they interlocked once in two picks of the loom.

Cross-int. 32. Please state how the warp threads interlocked with the weft threads in every movement of the lathe backwards and forwards in Exhibit 5, J. G., j'r.

Ans. Once in two picks.

Cross-int. 33. Look at Exhibit 6, J. G., j'r, and state how that interlocked with the weft threads in every movement backward and forward of the lathe.

Ans. Some of it interlocks every pick; some of it once in two picks

Cross int. 34. In making Exhibit 4, J. G., j'r, was there anything else used in making it besides the interlocking warps and weft threads and the rubber threads?

Ans. Sometimes there was a cotton thread put in with the selvedge rubber if it chafed; if it chafed it was necessary to put a thread in to keep it from breaking out—sometimes one thread, sometimes two, sometimes none. In this exhibit there are two. If the rubber was well cured it was not necessary.

Cross-int. 35. Did you ever put anything else in with the edge rubber thread besides the warp?

Ans. I never did.

Cross-int. 36. Please look at Exhibit 4, J. G., j'r, and say what amount of elasticity that exhibit ever had in it.

Ans. It might have had one-quarter.

Cross-int. 37. When these suspenders came from the loom were they elastic or rigid?

Ans. They were rigid.

Cross-int. 38. How were they afterwards made elastic?

Ans. By running through hot cylinders.

Cross-int. 39. Did you purchase the cotton threads in Exhibits 4, 5, and 6, J. G., j'r?

Ans. I did not.

Cross int. 40. Do you know of whom they were purchased?

Ans. I could not say.

Cross-int. 41. Of whom, between 1844 and 1849, did the Warren & Newton Co. purchase their cotton thread?

1027 Ans. The thread was purchased by M'r Warren of that company. We bought of various parties; we bought some thread of Nathaniel Dexter, of Pawtucket. Some of a man by the name of Beardsley, of Southbury, Conn. I do not know that I can name any other parties. If the books of the Warren & Newton Co. could be found they would show.

Cross-int. 42. Where are those books?

Ans. They were kept at a store, three miles from the factory at Watertown, belonging to the Warren & Newton Co.

Cross-int. 43. When did you see them last?

Ans. The books that are there I was told are packed away in the garret to the store. The store has been sold and moved off.

Cross-int. 44. In whose custody ought those books now to be?

Ans. Some of the books are in my custody. The accounts were kept in with the store accounts, and the members of the company are gone; some are dead, and I do not know where I can find the books. I have the day-book and journal of the Warner & Pritchard Manufacturing Co.

Cross-int. 45. Will you look at those books and furnish a statement of the persons from whom the Warner & Pritchard Co. purchased their cotton, and by what marks or numbers the cotton so purchased was then known?

Ans. I will.

Cross-int. 46. Was the cotton purchased from Dexter, of Pawtucket, what was known as knitting-cotton; and if it was not, what was the difference between that cotton and knitting-cotton?

Ans. It was not knitting cotton; it was two-ply weaving thread.

Cross-int. 47. Was the cotton that you purchased ready to go into the looms, or did it require preparation; and, if so, what?

Ans. It was unbleached and required bleaching and coloring; that was all.

Cross-int. 48. Please to describe the kind of treddles you used in making Exhibits 4, 5, and 6, J. G., j'r.

Ans. It was a piece of wood about two inches square and about four feet long.

Cross-int. 49. When the cam-shaft turned round, what did the cam strike upon?

1028 Ans. Upon an iron wheel that we called the truck-wheel.

Cross-int. 50. What size was that truck-wheel?

Ans. About 2 1-2 inches diameter.

Cross-int. 51. In the working of the cams upon those treddles that were not in operation, how high would the truck-wheel rise between the cams?

Ans. About 4 inches, I should think.

Cross-int. 52. How can a truck-wheel, 2 1-2 inches in diameter, rise 4 inches between the angles of the cam-shaft when the cam is 8 inches long and 1-4 of a circle in diameter?

Ans. By the shape of the cam; the shape of the cam can be made so that this truck-wheel can rise up to the hub of the cam if necessary.

Direct examination resumed by M'r Dean, of counsel for respondents:

Red. int. 53. How many different kinds of suspender webbings do the American Suspender Company make?

Ans. There is a kind we call face web with the cloth woven over the rubber both back and face. There is another kind called the dice web, in which the binders are sprung in a different way. We also still weave like Exhibits 2 and 4, J. G., j'r. Of all of the elastic suspender webbing I have ever known, Exhibit 4, J. G., j'r, is the simplest and the most easily made. That is the beginning of the alphabet of elastic suspenders, so far as I know. And in my experience the double cloth, with a whole cloth on each side of the rubber, was a subsequent improvement.

ISAAC E. NEWTON.

Subscribed and sworn to before me this 11th November, 1869.

JOSEPH GUTMAN, JR.,
Examiner, &c.

(Counsel for complainant objects to the reception of this deposition in the suit against the Glendale Fabrics Co. as immaterial to the issue therein raised.)

1029 *Deposition of John R. Williams.*

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John R. Williams; I am 46 years of age; I reside at Middletown, Conn.; I am a manufacturer and weaver. I commenced the practice of weaving for the Russell Manufacturing Company in 1842. I have continued with that company up to the present time, at Middletown, Conn. I have fitted up their looms for nearly all parts of their weaving. We have made webbing called 48's, which is woven in the following manner, and always has been: It consists of a warp of fibrous threads, with rubber cords between them, and is woven under tension; the fibrous threads of the warp cross and recross each other between the rubber cords while the weaving is going on.

Int. 2. What do you mean by the fibrous warp crossing each other while the weaving is going on? Do they lie across each other at any time in the fabric, or do you mean that in alternately rising and falling they pass each other, in making the shed to receive the filling?

A. They pass each other every second pick, to make the pick. The filling is held to the rubber cords by the warp or fibrous threads of the warp. The filling is woven in somewhat separated, so that when the tension is taken off from that class of goods they will shrink or draw up, contract; when the rubber is vulcanized it has to be subjected to heated rollers. The filling lies on both sides of the rubber cords—the rubber has no other covering but the filling. We sometimes weave yarn or thread in with the outside or selvedge edge with the rubber, to prevent it from chafing. We sometimes put in two cords of rubber in the selvedge edge. 48 webbing has been made with and without the round selvedge at various times from the time I commenced working for the Russell Manufacturing Co., in 1842, but mostly with the round selvedge.

1030 We made them both ways within six months from the time I commenced working for them in 1842. A round selvedge is a cord woven into the edge of the goods. It was double cloth; that is to say, it has a face and a back. The Russell Manufacturing Co. have made this webbing in large quantities. It is a very cheap webbing. It was known and called 48 webbing. Suspenders made from webbing woven in the same way has been sold as No. 50's. The suspenders were numbered 48's and 50's, and from that we took the name 48's, as they were numbered mostly 48's.

Int. 3. Look at all the Exhibits J. G., j'r, from 1 to 9 inclusive, and state how they compare with each other so far as the arrangement and relation of the rubber cords and warp and filling threads are concerned.

Ans. I should say that they were all alike excepting the selvedges, whether the rubber cords are covered by the filling only at top and bottom, and the filling is held down by being interwoven with the fibrous warps which lie between the rubber cords. I would say that the warp threads vary in number according to the goods or article required; the greater the quantity of bulk of cotton warps and filling, the less elasticity.

Int. 4. Have you a sample of the webbing first made by the Russell Manufacturing Company? If yes, produce it, and tell us all about it.

Ans. I think I have; I now produce a piece. (It is marked Exhibit 10, J. G., j'r.) That is some of the first web that was made by the Russell Co. in that way, the rubber being cut with shears. I have had that piece of suspender in my possession from that time, which was about 1842. I have kept it as a sample of that kind of goods first made by the Russell Co. On one side of this exhibit there appears alongside of the selvedge rubber cord a piece of cotton thread; on the other side there does not appear to be any in. The reason is that when they get chafing the cotton thread is put in to prevent it. Sometimes it will chafe on one side while the opposite will weave perfectly smooth. The Russell Manufacturing Co. have woven narrow goods in the same manner used for elastics, although not in very large quantities.

Int. 5. Did they weave goods like Exhibit 11, J. G., j'r; and, if so, how early?

1031 Ans. They did. I could not say positively how early, but I think about 1848-'9. The goods made by the company were not black like the exhibit, but the weaving was the same, and the elas-

ticity was obtained by the use of the unvulcanized rubber, and they were in colors for garters.

Int. 6. Could all these various exhibits from 1 to 11, J. G , j'r, be woven on the same loom that produced Exhibit 10, J. G., j'r ?

Ans. They could be where the single shuttle is used. The loom would not produce the wider exhibits without altering ; the spaces to hold the cloth would not be wide enough. All the narrow goods constructed like all these exhibits where the single shuttle is used could be woven on that loom.

Int. 7. State whether the Russell Manufacturing Company made other kinds of suspender-webbings, and state which of all the kinds they made was the simplest in construction and easiest woven.

Ans. The kind that is known as 48's without the round selvedge is the simplest web I think we ever made, as it only requires three harness-shafts to make it. We made the corded and dice web before we made this—I should say two years before I went to weaving. In 1840 the Russell Manufacturing Co. made them, and in 1842 we went at this. The corded was made first, the dice next, and then the 48's.

Int. 8. Did the Russell Manufacturing Co. ever make any shirred goods, or woven shirred suspenders ?

Ans. They made woven shirred suspenders. There was a cloth, a plain cloth between the rubber cords, which were about 1-8 or 1-16 of an inch apart. The rubber cords had a covering or a face on one side of them, a face side and a back side. The rubber cords were put in of coarse rubber, or more than one thread put together, so that when they were shrunk and contracted they would curl up between the rubber cords. That was the style in those times, and this was done in imitation of the shirred goods.

Int. 9. How was the rubber in those woven shirred goods covered at the top and bottom ?

Ans. The top had a cloth covering ; the bottom had nothing but the filling threads.

Examination adjourned to 2 p. m., same day.

1032 2 P. M.

Present, counsel as before.

Cross-examination by complainant, Smith :

Cross-int. 10. Can you swear that you made Exhibit 11, J. G., j'r, prior to 1850 ?

Ans. The Russell Co. did not make that exhibit; they made goods like it prior to 1850.

Cross-int. 11. You state in your direct examination that they were made into garters. Please state how they were trimmed and gotten up.

Ans. They were trimmed with a metallic clasp.

Cross-int. 12. Please state where the clasps were procured.

Ans. I could not say.

Cross-int. 13. Can you state any parties to whom they were sold ?

Ans. I cannot.

Cross-int. 14. Did you not make the garter webs the same as the sample now in your hand ?

(Sample marked Exhibit 12, J. G., j'r.)

Ans. I could not say ; this seems to be considerably jumbled up.

Cross-int. 15. Is not that Exhibit 12, J. G., j'r, what you call dice weaving ?

Ans. I cannot see any dice about it.

Cross-int. 16. Please to look at that exhibit again and say how many heddle-shafts it takes to make that fabric.

Ans. It seems to be a kind of a jumbled-up mess, and it is hard to tell.

Cross-int. 17. Do you mean to say as an expert weaver that you cannot say how that is made?

Ans. I should want a large piece to pick apart to find out. It seems to be confused.

Cross-int. 18. Do you not think that a young man if he was an expert at weaving, or an old man if he had glasses on, could describe the way and manner that that fabric was woven by looking at the exhibit?

Ans. It looks as if the threads were not in their proper places. It is a kind of jumbled-up mess.

1033 Cross-int. 19. Look at both sides of it.

Ans. It seems to be, as I said before, a kind of a jumbled-up mess, not uniform.

Cross int. 20. Look at it again and please tell me how many heddle-shafts it was made upon.

Ans. I think it could be made on two.

Cross-int. 21. Is that the best answer you can give to it?

Ans. If there was any uniformity to it, it would alter the case; there seems to be two or three threads together in a place; a kind of jumbled-up mess.

Cross-int. 22. Please look at it again and tell me how many heddle-shafts the rubber cords were put in with.

Ans. I should think there were fourteen rubber cords. The piece is so small that I should want to pick it to pieces to tell.

Cross-int. 23. (Question repeated.)

Ans. One heddle shaft, I should say.

Cross-int. 24. You stated in your direct examination that in the first rubber suspender that you made in 1842 you cut the rubber with shears. Please to describe the operation of cutting the threads with the shears.

Ans. I should say that it was cut from a sheet of rubber by cutting around the sheet on the outside, by hand.

Cross-int. 25. You mean to say that it was cut into a ribbon?

Ans. Yes, sir.

Cross-int. 26. Did that ribbon you describe make the whole thread of India rubber or only part of it?

Ans. It made one thread.

Cross-int. 27. What state was the sheet of rubber in that you cut the ribbon from, before you cut it?

Ans. It was in the native state.

Cross-int. 28. Was it in bottles or in sheets?

Ans. In sheets.

Cross-int. 29. What preparation was there on the sheets, if any, before you cut it into a ribbon?

Ans. There was none; it was sheet rubber.

Cross-int. 30. How were the sheets of rubber prepared, if at all, before you cut them?

1034 Ans. They were square sheets; we bought them in sheets; they were not prepared at *at* all after we bought them.

Cross-int. 31. Were not those sheets of rubber you speak of variable in thickness; thicker in some parts of the sheet than in another?

Ans. They were nearly uniform.

Cross-int. 32. While cutting those ribbons with shears, as you have just spoken of, could you cut them of one even thickness throughout, cutting them by hand?

Ans. Nearly so.

Cross-int. 33. Please state what thickness those sheets of rubber were that you cut them from.

Ans. About as thick as a pane of glass, 7 by 9 glass; as thick as an old-fashioned penny.

Cross-int. 34. Were those sheets of native rubber in the state that you bought them, when you had them to cut into ribbons as before stated?

Ans. They were.

Cross-int. 35. Where were those sheets of native rubber bought?

Ans. In New York.

Cross-int. 36. At what place?

Ans. I do not know; I could find out.

Cross-int. 37. Will you find out and attach to your deposition a statement where they were bought?

Ans. I will, if it is required.

Cross-int. 38. How long do you want to make such a statement?

Ans. I should need to go home and find out from the books. I will send within a week a statement of the information required to the commissioner. I think we bought it of M'r Corning; I am not sure.

Cross int. 39. When did you first buy those India-rubber sheets?

Ans. I think the Russell Co. bought them in 1840, when they first began manufacturing those goods.

Cross-int. 40. In 1840, when the Russell Co. first began to buy those sheets of rubber, were they similar sheets in form and size as those you cut in 1842?

Ans. They were.

1035 Cross-int. 41. What kind of native India-rubber goods were the first kind the Russell Manufacturing Co. made?

Ans. I think they were corded. It was two years before I got into it much.

Cross-int. 42. Were not you in their employ in 1840?

Ans. I was. I was working in their mill, but had not got much into weaving.

Cross-int. 43. Between 1840 and 1842, were not you in the habit of seeing goods woven by passing through the rooms?

Ans. I was.

Cross-int. 44. From your then knowledge and your subsequent knowledge, are you not able to say what kind of goods they were then making?

Ans. Corded and dice suspenders.

Cross-int. 45. At what time did they first begin to make the number called 48 suspenders?

Ans. That kind of goods was made in 1842.

Cross-int. 46. When did you know a suspender known in the market or manufactory as No. 48? Please state as near as you can when you first knew it.

Ans. It went by the name of 48's when we first commenced to make t in 1842.

Cross-int. 47. Please state how long they continued to be known as 48's.

Ans. From that time to this.

Cross-int. 48. Did you in Exhibit 10, J. G., j'r, cut the India rubber with a pair of shears from an unprepared sheet of India rubber?

Ans. I did not, myself.

Cross-int. 49. Did you see any one else do it, either for this piece or for exactly similar pieces of webbing?

Ans. I did not.

Cross-int. 50. How do you know, then, that the rubber was cut with a pair of shears from an unprepared sheet of rubber, if you neither did it yourself or saw any one else do it?

Ans. Those that did it said that was the way they did. It was cut by girls.

1036 Cross-int. 51. Can you swear that Exhibit 10, J. G., j'r, is in exactly the same condition regarding the make and the trimming as it was in 1842?

Ans. It is somewhat faded—otherwise it is the same.

Cross-int. 52. Do you mean to say the green silk bound over the ends was bound on at that time? And was that the style and the way you trimmed them in 1842?

Ans. I do.

Cross-int. 53. Did the Russell Manufacturing Co. at that time in 1842 make their own weft and warp threads, or did they purchase them elsewhere?

Ans. They made some and bought some, and have continued that ever since.

Cross-int. 54. In what manner were the warp threads spun and put together before they went into the looms, commencing with spinning the thread?

Ans. It is bleached, colored, wound, spooled, warped, drawn into the loom and woven, if that is the queston. The warp threads were doubled and twisted. I should think to answer this question I should want to begin at the bale of cotton.

Cross-int. 55. What kind of twist did you make in making this twist, a right-hand twist or a left-hand twist?

Ans. I do not know whether it was right or left; that is a little off from weaving—you have got into spinning now.

Cross-int 56. How many kinds of twists did you put in the thread?

Ans. Some of it was bought already twisted.

Cross int. 57. I mean that that you made yourselves.

Ans. I should say two.

Cross-int. 58. Describe them.

Ans. One twist with the yarn and one when it is doubled into thread.

Cross int. 59. Was the cotton you bought already prepared made and twisted in the same way as you made it in the factory?

Ans. I think it was.

1037 Cross-int. 60. You spoke in your direct examination of woven corrugated goods; that on one side of which the India rubber threads lay in a sheath or bag, and the other side covered by the weft threads only; please to say as near as you can how much elasticity those goods had in them after being passed through the hot rollers or steam.

Ans. I should say about six inches to the foot.

Cross-int. 61. When did you first know of such goods being made?

Ans. There were suspenders made—pasted goods. The first that I ever saw woven was those that we made woven in imitation of the shirred goods.

Cross-int. 62. Please give the date when first you saw them, and when last you saw such woven corrugated goods.

Ans. I could not do it.

Cross-int. 63. Did you see them as early as 1842?

Ans. I think I did not.

Cross-int. 64. Did you see them as early as 1845?

Ans. I think we made them before that time.

Cross-int. 65. Did you see them in the year 1850 being made?

Ans. I could not say.

Cross-int. 66. Were you the only makers of those kinds of goods—the Russell Manufacturing Co.?

Ans. I think not.

Cross-int. 67. What numbers were they sold by as they were made by the Russell Manufacturing Co.?

Ans. I could not say. I think they went by the name of shirred.

Cross-int. 68. Do you recollect my calling at the office of the Russell Manufacturing Company in August, 1868?

Ans. I do.

Cross-int. 69. Did not M'r Russell send for you from another part of the building to come into the office while I was there?

Ans. He did not; he had been dead six years.

Cross-int. 70. I mean M'r Hubbard.

Ans. M'r Hubbard did.

Cross-int. 71. Did I not show you and M'r Hubbard a piece of suspender webbing similar to this now shown you, and say that that was made under my patent?

(Sample marked Exhibit 13, J. G., j'r.)

1038 Ans. I do not remember it.

Cross-int. 72. Did you not hear M'r Russell say that they made those goods 25 years ago?

Ans. I did not.

Cross-int. 73. Did you hear M'r Hubbard say so?

Ans. I do not recollect seeing that piece of goods.

Cross-int. 74. Please say what kind of webbing I did show you.

Ans. You showed me a piece of thin black webbing, black on one side and orange or yellow on the other.

Cross-int. 75. Did you hear M'r Hubbard say that they made similar goods 25 years ago?

Ans. I think I heard him say that they had made suspenders 25 years ago in that way.

Cross-int. 76. Did you see him pull out a drawer from under his desk to look if he had not got a sample in his desk of the goods he mentioned?

Ans. I think I did.

Cross-int. 77. Did he find any?

Ans. I do not think he did.

Cross-int. 78. Did he ask you if you could find any?

Ans. I have no recollection of it.

Cross-int. 79. Did not you go out of the office to seek for a sample that was made long ago?

Ans. I do not think I did; I have no recollection of it.

Cross-int. 80. Were not you making 48 suspender web similar in construction to Exhibit 2, J. G., j'r, at that time?

Ans. We were.

Cross-int. 81. Please say what was the reason that neither you nor M'r Hubbard could show me a sample of goods made and constructed like what you say is similar to my patent?

(Objected to, as witness has not said that any webbing was made like complainant's patent. Question withdrawn.)

Cross-int. 82. Why did not you produce the samples at that time which you have produced here to-day?

Ans. I did not know they were wanted.

1039 Cross-int. 83. Did not M'r Hubbard say to you, "Didn't we make these goods 25 years ago?"

Ans. I think he did.

Cross-int. 84. Can you not say when I was there and showing you those goods why you did not show me any goods similar to mine?

Ans. I have no recollection of their being called for.

Cross-int. 85. Did you ever know a person by the name of Thomas Hope? If yea, state when you first knew him, and where.

Ans. I never did. I knew Lewis Hope.

Cross-int. 86. Did you ever know Lewis Hope?

Ans. I did.

Cross-int. 87. State where and when first you knew him.

Ans. He came to our place, at Middletown, I should think in 1848.

Cross-int. 88. Did he not come there in the summer or fall of 1849?

Ans. Perhaps so. I am not certain whether it was in 1848 or 1849; it was about those times.

Cross-int. 89. Did he not come to make alterations in those suspender looms, and to fit up machinery for cutting fine India-rubber thread?

Ans. He came to fit up machinery for cutting India-rubber thread.

Cross-int. 90. State what else he came for.

Ans. I think that was all; he stayed a year or two.

Cross-int. 91. Did he not make alterations in your suspender-looms, and stop all your looms at one time, to make the alterations, which was the cause of a quarrel between M'r Russell and M'r Hope, and caused a separation?

Ans. M'r Hubbard is not in the habit of having his looms stopped by one man. M'r Russell had never meddled with the affairs of the factory at all.

Cross-int. 92. Did M'r Hubbard and M'r Hope quarrel on that subject?

Ans. I do not think he did; he is not a quarrelsome man.

Cross-int. 93. About what time did M'r Hope leave the Russell Company?

1040 Ans. I should think he was there about two years. I could not say positively.

Cross-int. 94. Did not M'r Hope teach you how to cut fine India-rubber threads, or teach M'r Hubbard?

Ans. They bought some machinery of him for that purpose.

Cross-int. 95. Did you cut fine India-rubber threads after you bought the machinery of M'r Hope?

Ans. Some fine and some coarse; two kinds.

Cross-int. 96. How much finer did you cut it after M'r Hope put up that machinery, than ever you did before?

Ans. I do not know that we cut it any finer. We had machinery for cutting India rubber before M'r Hope came there.

Cross-int. 97. How fine could you cut your rubber threads before M'r Hope came there?

Ans. We had no particular way of sizing it to get at the fineness.

Cross-int. 98. Can you describe how fine any you ever cut was, before M'r Hope came to your factory?

Ans. It was cut fine enough for all our use; fine enough to make suspenders.

Cross-int. 99. Are you not aware that suspenders made in this country by threads cut in this country were very coarse before M'r Hope came to your factory, in comparison to what they are now?

Ans. I was not aware of it.

Cross-int. 100. Do you mean to say that you never saw suspenders with very coarse threads of rubber in them, as a very general and universal thing, before that time?

Ans. I do not. The object of his machinery was to work up the scraps and all the waste rubber.

Cross-int. 101. Is the whole of your last answer as true and correct as any other that you have given?

Ans. I think it is. We had machinery for cutting up rubber before M'r Hope came there, and the object of his machinery was to work up the scraps.

1041 Direct examination resumed:

Int. 102. Was your business confined to weaving and to what was going on inside of the factory?

Ans. Most of the time.

Int. 103. Was that particularly the case during the first years of your employment by the Russell Manufacturing Co.?

Ans. It was.

Int. 104. During the first years of your employment by the company did you know much about their mercantile transactions?

Ans. I did not.

Int. 105. When you speak of numbers of goods, then you speak of them as they finally were known and called in the factory?

Ans. I do.

Int. 106. Can you, or can you not, tell by what numbers or designations goods were first put upon the market?

(Objected to as having been already answered.)

Ans. I cannot.

Int. 107. Was that a part of the business with which you had nothing to do?

Ans. It was.

Cross-examination resumed:

Cross-int. 108. Do you mean to say that any of the answers you have given in your cross examination are not true?

Ans. I do not.

Cross-int. 109. You swear that they are true?

Ans. I think they are true. I intended to have them so.

JOHN R. WILLIAMS.

Subscribed and sworn to before me this 11th day of November, 1869.

JOSEPH GUTMAN, Jr,
Examiner, &c.

Examination further adjourned to Nov. 15th, 1869, at 11 a. m.

1042 NEW YORK, *Nov.* 15, 1869.

Examination adjourned to Nov. 25, 1869, at 11 a. m.

NEW YORK, *Nov.* 25, 1869—11 a. m.

Examination adjourned to Nov. 26, 1869, 11 a. m.

Deposition of Henry G. Hubbard.

NOVEMBER 26, 1869—11 a m.

Present, counsel as before for complainant, and M'r Gifford, of counsel for respondents.

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Henry G. Hubbard; I am 54 years of age; reside at Middletown, Conn.; I am a manufacturer; I am president of the Russell Manufacturing Co., and have been for a great many years.

Int. 2. What is the business of that company?

Ans. Manufacturing webbing and suspenders.

Int. 3. When did you first become connected with the manufacture of elastic webbing?

Ans. During the year 1840.

Int. 4. What part of the time since then have you been connected with it?

Ans. The whole time.

Int. 5. What kind of elastic webbing did the company with which you was connected manufacture, say in 1841?

Ans. They made the web which is known as the 48's, and also a corded web which was then known as No. 50, and also a dice web.

Int. 6. State whether it is the practice for different manufacturers of elastic webbing to have their own numbers without reference to the numbers of others, to designate their goods?

Ans. It is customary.

1043 Int. 7. In the webbing manufactured by your company as early as 1841, by what, if anything, were the rubber cords covered at top and bottom?

Ans. In the 48 web they were covered by the filling only; in the corded and dice web they were covered by both the filling and the warp.

Int. 8. Look at *at* the exhibits from No. 1 to No. 6, both inclusive, and state which of them, if any, is the kind which was manufactured by your company as early as 1841, and designated as No. 48.

Ans. No. 2 and No. 5 were known as No. 48; No. 4 and No. 6 were known as No. 26 and No. 29; No. 4 and No. 6 were made first, and No. 2 and No. 5 were improvements on the selvedge of No. 6 and No. 4.

Int. 9. State whether or not Nos. 4, 6, 2, and 5 are all kinds which were manufactured by your company as early as 1841, and, if not, please state which of them are the kinds which your company manufactured as early as 1841.

Ans. Nos. 4 and 6 were manufactured as early as 1841; and I think that Nos. 2 and 5 were manufactured as early as 1841. Nos. 4 and 6 were the first rubber webs that were woven in power-looms at that time.

Int. 10. How early can you say for certainty that webbing like Exhibits 2 and 5 were manufactured by your company?

Ans. From 1841 to 1843.

Int. 11. What can you say as to the continuation of your company in manufacturing such webbing from 1841 or before?

Ans. I can say that we commenced to manufacture that elastic web during the year 1840, and have continued to manufacture it ever since.

Int. 12. What can you say as to the quantities manufactured by your company from the commencement down?

Ans. From January, 1841, until 1846 or 1847, we probably made 300

dozen suspenders per week of that character of web; from that time till 1855, we increased the quantity.

Int. 13. What was done with the elastic webbing, or of the suspenders made of it so manufactured by your company?

1044 Ans. The suspenders were sold in New York, Philadelphia, Boston, and other principal markets in the country.

Int. 14. Look at the specimens, being exhibits from No. 1 to No. 13, both inclusive, and state how they all correspond as to the relation between the cotton warp threads, filling threads, and rubber cords.

Ans. They are all alike.

Int. 15. What can you say as to the relation of the cotton warp threads in these specimens to the rubber cords?

Ans. The warp threads cross between the cords of rubber at each throw of the filling.

Int. 16. Do you know John R. Williams; and, if yea, how long have you known him, and where has he been employed and in what capacity?

Ans. I have known him for 33 years; he has been employed by the Russell Manufacturing Company during the whole of that time as weaver, or what they call boss weaver—superintendent.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 17. How do you recognize the exhibits concerning which you have testified?

Ans. These originated in my own mind 30 years ago; my success and career in life depended upon the success and sale in this business, and they are as familiar as anything can be to any person.

Cross-int. 18. Do you know when, where, or by whom any of these exhibits were woven? I mean the identical exhibits.

Ans. I have reason to know that Exhibits 2, 4, and 10 were made in our own establishment. I recognize them. I have reason to know that they were brought here by M'r Williams, who is in our employ, and that he has had those samples in his possession since the time they were made.

Cross-int. 19. Does the Russell Manufacturing Co. now manufacture and sell goods like any or all the exhibits? Specify which.

Ans. They manufacture now like Nos. 2 and 5.

Cross-int. 20. What kind of rubber did you use in making the elastic fabrics manufactured prior to 1850?

Ans. Native rubber.

1045 Cross-int. 21. How was the rubber prepared for the loom?

Ans. In 1840, when we first commenced, and in 1841, it was cut from sheet rubber by hand with shears. The sheet' were imported into this country for the purpose of being made into rubber shoes; they were about 1-16 inch thick, about 14 inches long, and 12 inches wide. They were cut with shears, a person holding the shears in one hand and cutting around from the outside to the center, making one continuous thread of each sheet.

Cross-int. 22. Of whom did you purchase those rubber shoes?

Ans. We bought them of S. C. Smith & Son, I think. Their place of business was in the Bowery, out as far as the Bowery—Chatham street, I think. We also bought of E. Corning, who was an importer. Soon after 1841, this native rubber thread was cut from bottles of native rubber—what was called bottle rubber—then soaked in hot water, then spun on reels and left to dry and the stretch taken out of it, then prepared into warps for the looms.

Cross-int. 23. Did you not state in your testimony given in the case

of William Smith against J. T. Whitehouse that you bought your rubber of Horace H. Day, and also of Cutler & Jenks, a firm in Springfield?

Ans. That was vulcanized rubber.

Cross-int. 24. Were the suspenders manufactured by you from native rubber rigid when they came from the loom?

Ans. That would depend very much upon the state of the atmosphere in the room. The elasticity of the native rubber is restored by heat; in hot weather in the summer it is difficult to keep that elasticity out of it. That is to say, it will shrink up in hot weather.

Further cross examination by complainant in person:

Cross-int. 25. Please state in what year No. 4 and No. 6 went out.

Ans. In 1842.

Cross-int. 26. You have stated in your cross-examination that your boss weaver bought the following exhibits, Nos. 2, 4, and 10. Please state when No. 10 went out of existence in the market.

1046 Ans. This was an article which we made from waste warps, and as the very poorest quality of suspenders. They were made up into boys' suspenders, and they went out of market probably in 1845 or 1846.

Cross-int. 27. Please state when first you brought No. 10 into the market.

Ans. I should think in 1842 or 1843.

Cross-int. 28. Do you recollect my calling upon you at your factory in August, 1868?

Ans. I recollect your being there some time during that year.

Cross-int. 29. Please state what part of the year, to the best of your recollection.

Ans. During the summer.

Cross-int. 30. Do you recollect my showing you a sample of goods; and, if yea, what reply did you make to me?

Ans. I do not recollect. I was not aware of any suits pending at that time, in any way.

Cross-int. 31. Do you recollect your pulling out a drawer from under your desk and pulling out a sample? If yea, state your motive for pulling out that sample.

Ans. I do not recollect what motive I had. I recollect your being there and handling samples. I do not recollect your making known the object of the visit. I do not think you did.

Cross-int. 32. Do you recollect sending for M'r Williams in the room where we were? If yea, state your motive in sending for him.

Ans. I recollect sending for M'r Williams. I should have forgotten it if M'r Williams had not mentioned it to me a few days ago. I recollect that I had heard that you had a patent for the weaving of rein web, with the gutting or middle warp stationary, the only patent that I knew of your ever having taken out. I sent for M'r Williams because he was a practical weaver, and I thought you could entertain each other. That was the only motive that I had, that I recollect of. You made no claims or demands upon me, nor explained the objects of your visit.

Cross-int. 33. Is your memory as bad in other particulars as it is about my visit to you?

1047 Ans. I have the credit of having a very good memory, I believe.

Cross-int. 34. What did you say, if anything, about making garters to me?

Ans. I do not recollect as I said anything to you about making garters.

Cross-int. 35. Did not I show you a sample of goods and say it was my patent, and was not your reply to me that you had made the goods 25 years ago? Did you not pull out a drawer from under your desk to pull out a sample and could not find it? Did you not then send for M'r Williams to come, and when you asked him if he had any samples of the goods you made 25 years ago he said he had not? did you not also say that you intended to begin making garters; that you never had made any garters, and that if you did, you would let me know if you should make them under my patent; and if you had, and were making 48's, which you state you have ever since 1842 or 1841, why did you not produce a sample to show me a fabric which you said was like mine?

Ans. I do not recollect whether you showed me a sample of goods and say it was your patent or not. I do not recollect the particulars of that conversation; it did not impress me as being of any importance. I think we handled samples and examined samples. I sent for M'r Williams to entertain you. I have no recollection of our speaking of the garter web at all. I have no doubt, if you showed me a sample of 48 web, that I told you we had made it 25 years previous. I had no object in producing a sample.

Cross-int. 36. Are you willing to swear that that conversation did not take place as I have stated?

Ans. I do not recollect the particulars of our conversation. I cannot swear to that conversation. I cannot recollect it. I have a great deal of business on my mind, and my time is fully occupied, and it cannot be expected that I can remember everything that is said in my office by every stranger that appears.

Cross-int. 37. If I was a perfect stranger to you, which I am not, and a stranger were to come to your place of business and say to you, "I have a patent upon a certain kind of suspenders," would it not
1048 be likely to make more impression upon you than a man coming into your office to ask an ordinary question?

Ans. If a stranger, or any individual, were to come to my office and say he had a patent on a suspender webbing which I had discovered 25 years ago, and been continually making since, it would not make much impression upon me; it ought to make an impression upon him.

Cross-int. 38. Was a hurdle web ever mentioned in my presence at that interview?

Ans. I think it was, but could not swear to it.

Cross-int. 39. I shall close your cross-examination with the remark: "When you hear any one tell you that you have a good memory, don't believe them."

Direct-examination resumed:

Int. 40. Was your No. 48 at any time changed to some other number; that is, were the same kind of goods at any time represented by any other number or numbers after they had been represented by 48?

Ans. The same kind of web in being made into suspenders was trimmed in different styles, the button-holes, buckles, or straps a little different, and thereby the same style of web would have different numbers in suspenders.

Int. 41. Where was the number 48 usually placed in the use of it in connection with the suspenders known by that number?

Ans. The suspenders are usually packed two dozen in a paper box. The boxes are all labeled with the numbers on each box, indicating their contents.

Int. 42. Has your manufacture of that kind of suspender at any time been represented by another number also?

Ans. It is now represented as No. 51.

Int. 43. When did it come to be represented by No. 51, if you know?

Ans. I do not recollect. From a change in price they sometimes change the number of the same kind of goods.

1049 Cross-examination resumed by M'r Smith:

Cross-int. 44. Has that change in number to 51 been of more than six months' standing?

Ans. Yes, of more than a year's standing.

Cross-int. 45. In cheap kinds of suspenders are not the numbers sometimes marked on the straps, behind or before, in ink?

Ans. Where they are put up in bundles and not in boxes they are.

Cross-int. 46. Have they ever been called No. 50?

Ans. They have.

Cross-int. 47. At what time did they commence to be called No. 50, and when did they cease to be called 50?

Ans. I think they were called No. 50's about the year 1857. I think they ceased to be called 50's about the year 1865.

HENRY G. HUBBARD.

Subscribed and sworn to before me this 26th day of Nov., 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination further adjourned to Nov. 27, 1869, at 11.30 a. m.

NOVEMBER 27, 1869—11.30 a. m.

Examination further adjourned to December 2, 1869, at 11 a. m.

DECEMBER 2, 1869—11 a. m.

Examination further adjourned to December 14, 1869, at 11 a. m.

1050 *Deposition of Edwin B. Stimpson.*

NEW YORK, *Dec.* 14, 1869—11 a. m.

Present, M'r Blake, of counsel for plaintiff, and M'r Dean, of counsel for respondents.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Edwin B. Stimpson; I am 42 years of age; I reside at Brooklyn, N. Y.; I am a manufacturer of boot and shoe uppers.

Int. 2. How long have you been engaged in that business, and where?

Ans. In the shoe business since the year 1842, in the making of uppers; a part of the time in England, and the last part of the time here; at Northampton, England, from 1842 to 1851, and the remainder of the time in New York City.

Int. 3. What experience have you had in the use of elastic fabrics as shoe-gores?

Ans. They were used in the factory at Northampton, England, when I first commenced business. I believe that the goods were similar to those now used. I cannot state, except from recollection only, and cannot be positive. I know that the rubber was not of the same quality as now used; it was not vulcanized. I have continued to use the elastic ever since.

(Counsel for complainant objects to the whole of the foregoing answer as immaterial, and as containing matter not set up in the pleadings.)

Int. 4. To what extent were elastic shoe-gores used in England?

(Same objection.)

Ans. At first I think they were but very little used, on account of the inferior quality of the rubber, and I think towards 1845 or 1846 they were used considerably, as near as I can remember. Before 1851, before leaving England, they were extensively used.

Int. 5. In the manufacture of uppers, was it a part of your business to cut the elastic shoe-gores into shape?

1051 (Same objection.)

Ans. Yes, sir.

Int. 6. State whether you have been in the constant habit of cutting elastic shoe-gores into shape, from 1842 to the present time, and whether you have noticed any change in the manner in which the fabric was made and put together.

Ans. No, sir; I did not begin to cut the fabrics into gores in 1842, being a boy in the factory at the time. I did not commence to cut them until two or three years afterwards. I do not like to make these statements under oath, as I do not know positively when I began to cut shoe gores. I began first by cutting up pieces of leather, and learning the business generally. I cannot say that I noticed any change in the manner in which the fabric was made and put together.

Int. 7. Have you noticed any change since you came to this country?

Ans. No; except recently—except for the last year. The rubber appears now to be covered. The name of the fabric now generally used is called Terry elastic, and is very different to what has been used previously.

Int. 8. With that exception, did you notice any difference in the make of the elastic fabric used by you in England and in this country?

(Same objection.)

Ans. I knew of the Horace H. Day goods as soon as I arrived here, and used them, but frequently used imported elastic as well. The Horace H. Day goods were a very different article. They were a sheet of rubber all through, instead of threads of rubber; and some of Day's goods also contained threads of rubber pasted between the fabrics.

Int. 9. With the exception of the Terry goods, did you notice any difference in the make of the woven elastic fabric used in England and the woven elastic fabric used by you here?

(Same objection.)

Ans. No, sir.

Int. 10. On stretching the fabric could the rubber cords be distinctly seen?

Ans. I think they could, except on Day's goods and the Terry now in use.

Int. 11. Did you ever see elastic shoe-gores, the elasticity in which was obtained by wire springs? If, yes, when and where?

1052 Ans. Yes, sir. In Northampton, England, before the time that I went into business.

Complainant in person proceeds to cross-examine, de bene esse:

Cross-int. 12. Please state what age you were when you first went into the factory in Northampton.

Ans. About 13 years.

Cross-int. 13. Please state how your time was occupied from your childhood until you went into that business in Northampton.

Ans. I ate, and drank, and slept, and went to school.

Cross-int. 14. If there was anything else you did, please state it.

Ans. I do not wish to state any more about that.

Cross-int. 15. Please state what knowledge you had of weaving and the construction of different fabrics in weaving while in England.

Ans. None.

Cross-int. 16. How distinct is your recollection about the fabrics you first used in England as shoe-gores?

Ans. Not very distinct.

Cross-int. 17. Have you not stated, in giving your direct testimony, that your recollection is very indistinct, and that you dislike to speak under oath in regard to these matters?

Ans. I did say so.

Direct examination resumed by M'r Dean:

Re-int. 19. Did you say that your memory was indistinct regarding the fact that elastic shoe-gores made of India rubber were used, or that it was indistinct regarding the manner in which it was put together?

Ans. Indistinct as to the manner of putting together.

Re-int. 20. Is there any indistinctness in your memory as to the fact of elastic shoe-gores having been used during the time you have stated in your direct testimony?

Ans. I distinctly remember such elastic being used.

EDWIN B. STIMPSON.

Subscribed and sworn to before me this 14th day of December, 1869

JOSEPH GUTMAN, J'R,
Examiner.

1053 *Deposition of Bethuel Dodd.*

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Bethuel Dodd. I am 47 years of age. I reside at Newark, N. J. I am a manufacturer of skirts.

Int. 2. Were you ever engaged in the manufacture of elastic fabrics of any kind? If yes, when, where, and what kinds?

Ans. Yes, sir; in Newark—making suspender webbing, and going as far back as 1849.

(Objected to by counsel for complainant as containing matters not set up in answer in these suits.

(Counsel for complainant further objects to the reception of the deposition of this witness, so far as it relates to the prior use or knowledge of the complainant's invention; that it should not be received at this stage of the cause, defendant having closed this branch of the case, and complainant being still engaged in putting in their rebutting testimony.)

Int. 3. You say you can make an addition to your previous answer to which the defendant's counsel objected; please make it now if you desire to.

Ans. I commenced manufacturing suspenders in 1842. I was engaged in weaving web in 1848.

(Same objection.)

Int. 4. Did you at any time have any business connection with William Smith, the complainant, for the making of elastic webbing? If yes, state what it was, and when it commenced, and when it ended, and what was done under it.

Ans. Yes; previous to the 9th of November, 1849, M'r Smith applied

to me with a piece of elastic goring in the shape of a V, saying if we would furnish room and power, and $250 in money, and six weeks' time, he would produce an article exactly like it. We furnished room
1054 and power, and over six months' time, and, from the footings in our old books, over $3,000. It turned out to be a perfect failure. I think the arrangement ended in July, 1850.

(Counsel for complainant objects to the whole of this answer as immaterial.)

Int. 5. You say it was a failure. Were not goods woven by M'r Smith at your factory after the manner of the weaving of the sample shown by you?

(Same objection.)

Ans. He never produced anything like it.

Int. 6. What do you mean by not being like it? Do you mean not woven in the same way, or not made into as nice goods?

(Same objection.)

Ans. The weaving I believe to have been similar, but it was not merchantable; not desirable.

Int. 7. How did the weaving compare with the woven elastic shoe-gores in common use?

(Same objection.)

Ans. There was no sale for such as he made there; it was rough, irregular. I hardly know what to say about it; it was the result of all kinds of experiments.

Int. 8. Were none of the fabrics made by M'r Smith at your factory during that time sold?

Ans. Yes, sir.

Int. 9. Have you a memorandum taken from your books showing the dates and amounts?

Ans. Yes, sir.

Int. 10. Please look at it, and state the dates and amounts of such sales.

(Same objection, and also as immaterial.)

Ans. To John Thornley, of Philadelphia, $53.25, in March, 1850; other sales to November, 1850, about $300. They were in small amounts, running from May to November, 1850.

Int. 11. Can you tell the colors? Of what colors were the goods woven by M'r Smith?

Ans. Black, drab, and brown.

Int. 12. Did M'r Smith have any of the goods to get them introduced into the market?

1055 (Same objection.)

Ans. He had samples, and offered them in Newark and New York.

Int. 13. While connected with you, as you have stated?

Ans. Yes, sir.

Int. 14. Could he have made sales of them if he had been disposed?

(Same objection, and also as immaterial.)

Ans. Our cash-books do not state whom the sales were made by.

Int. 15. Was there any objection to M'r Smith's making sales of small amounts when endeavoring to introduce them into use?

(Same objection.)

Ans. At first, yes; afterwards any of us were allowed to take orders and send to the office, and the orders were so filled and sent out. M'r Smith offered the goods to all the large houses in New York, in order to

state to M'r Brewster the extent of the trade, M'r Brewster proposing to buy us out and going on with the business with M'r Smith.

Int. 16. Was that before the close of the connection of the business relations between you and M'r Smith?

Ans. Yes, sir.

Int. 17. Have you any sample of the web woven by M'r Smith in your factory during that time?

Ans. No, sir.

Int. 18. Had you before your connection with M'r Smith made or sold suspenders woven in the same manner in which M'r Smith made web at your factory?

(Same objection.)

Ans. We bought suspender webbing made in a similar manner to one kind of his webbing.

Int. 19. Similar to what kind?

Ans. I do not know that I can describe it. The webbing that I refer to was like the suspender known as 48 in the market.

Int. 20. How many kinds of web did M'r Smith make?

(Same objection.)

Ans. Three. He made some like Exhibit 7, J. G., j'r, silk on both sides; the kind that I allude to you could see the rubber pretty
1056 well on stretching it. Another kind he made by taking a piece of rubber through a machine and covering the strands spirally with threads lengthwise, before it was taken to the loom; and another kind was a raised, smooth surface on the outside, black, and a plain white surface on the inside. Those are the kinds that he made, as near as I recollect; there might have been others.

Cross-examination by the complainant, M'r Smith:

Cross-int. 21. Was there not an engagement in writing between you and M'r Smith? If yea, state the nature of that agreement.

Ans. I think I have stated it in one of my answers; there was a memorandum between us of some kind.

Cross-int. 22. Please state what it contained.

Ans. It stated, as near as I can recollect, that for $250 and about six weeks he would produce the article like the sample, and after that he should have some kind of an interest in that department.

Cross-int. 23. What kind of an interest?

Ans. I do not recollect.

Cross-int. 24. Are you positive that the answer to cross-interrogatory 22, about the $250 in money and the six weeks' time, is true?

Ans. To the best of my recollection, yes.

Cross int. 25. Is that answer to the 22d cross interrogatory as true as any other and all other evidence you have given this day?

Ans. It is all true.

Cross-int. 26. Did you not swear before Judge Hilton, in March, 1858, that all the goods complainant made at your place in Newark were a total loss; that you never realized anything from them, but kept them to light the stove with?

Ans. I have no recollection of it.

Cross-int. 27. Did not your partner, M'r Wakeman, take the attorneys and counsel to his place of business, in Chambers street, New York, to see some of them; and did not M'r Wakeman and some of his clerks or porters swear that the only use ever made of the goods was to light the stove with them?

Ans. I have no recollection of it.

1057 Cross-int. 28. Will you swear that you did not give the testimony that the only use made of said goods was to light the stove with?

Ans. I have no recollection of it.

Cross-int. 29. Did not Smith make some suspender webbing at your factory in Newark?

Ans. I think not. I think one of the men about the factory did make a small quantity.

Cross-int. 30. What man?

Ans. I do not recollect the name.

Cross-int. 31. Describe how they were made.

Ans. I am no weaver. I suppose we furnished the material and the man made the goods.

Cross-int. 32. Were they not made in a twelve shuttle loom complainant brought to your place?

Ans. I have no recollection.

Cross-int. 33. Can you describe the kind of suspender webbing one McCoy was making on one of your looms in the same room and at the same time I was making suspenders on one of my looms?

Ans. The suspender webbing was so trivial that I paid little or no attention to it.

Cross-int. 34. Did you ever buy any looms and suspender webbing from M'r Gurney? If yea, please state when and what amount.

Ans. I think that he made one or two looms for us. I think that there was some web woven on those looms. I can refer to our old books and give the dates and everything appertaining to them.

Cross-int. 35. Was there not a difficulty in procuring regular power to make the goods, and had not a pair of cone pulleys to be made by one M'r Smith in New York to try and remedy the difficulty?

Ans. Now that question has come up, I recollect one of the workmen remarking that it was a damned humbug—an expense for nothing.

Cross-int. 36. (Question repeated.)

Ans. I have given my answer.

Cross-int. 37. Do you refuse to answer the question?

Ans. That is my answer, to the best of my recollection.

1058 Cross-int. 38. Will not your books show that you did have a pair of cone pulleys made by M'r Smith, of New York, and did you not pay for the same?

Ans. Our books will show that we were put to many unnecessary expenses, and that he, M'r Smith, was experimenting at our expense.

Cross-int. 39. Please give an answer to the last question.

Ans. I have already answered it.

Cross-int. 40. (38th cross-interrogatory repeated.)

Ans. I have already answered it.

Cross-int. 41. Do you refuse to answer the question already put?

Ans. If it is important, I will refer to the books.

Cross-int. 42. Will you refer to your books and attach the reference to your testimony this week?

Ans. Certainly.

Cross-int. 43. Did not M'r Smith have to go to Paterson, N. J., to try to have cotton threads made suitable to make the goods, as you could not find, as you said, anything suitable in the market; and did not Smith go to Paterson, and the finest material he could procure to be made was No. 30, a two-fold?

Ans. I have no recollection of those small details, but think that we

ordered cotton for him from Paterson and England, and I think we had one bale from Germany, all by his direction.

Cross int. 44. Did you ever receive such goods from Germany or England? If yea, when and by whom and what house were such goods imported?

Ans. I do not recollect anything about the details.

Cross-int. 45. Will your books show when such goods were ordered, when received, what amount, the cost, and when paid for?

Ans. I suppose they will show every transaction.

Cross-int. 46. Will you make a memorandum from your books of such transactions of importing goods at my request, and attach it to your deposition this week?

Ans. Excuse me.

Cross-int. 47. I do not excuse you, but now make a demand for you to produce your books. Will you do so?

Ans. As soon as I can conveniently do it, I will do it.

Cross-int. 48. When will it suit your convenience?

1059 Ans. When I have the time to attend to it.

Cross-int. 49. When will that time be?

Ans. This month.

Cross-int. 50. Where are those books now?

Ans. They were in Newark this morning.

Cross-int. 51. In whose possession are they this morning?

Ans. In my possession.

Cross-int. 52. Can you have access to them at any time?

Ans. Yes.

Cross-int. 53. Why, then, cannot you produce them here to-morrow?

Ans. I have my own business and other business to attend to.

Cross-int. 54. Do you mean to say that you will use your own pleasure about them, and produce them or not, according to your pleasure?

Ans. I have answered above. I will produce them this month.

Cross-int. 55. Do you omit Sundays and Christmas day, in your last answer?

Ans. No.

Cross int. 56. Do you mean that if you produce them on a Sunday or Christmas day you fulfill your promise?

Ans. Yes; within the month.

Cross-int. 57. Did not M'r Smith, while in Newark with you, and could not procure funds from you, as per agreement, and one Saturday did he not pawn his watch to give some little money to the men employed by him?

Ans. M'r Smith asked for $250 to produce the article, as per sample. Our accounts show that over $3,000 was expended.

Cross-int. 58. Is that all the answer you can make about it?

Ans. That is the answer.

Cross-int. 59. Did you not try to purchase the machinery from M'r Smith before you made a forcible entry into the premises at Newark?

Ans. Never to my knowledge.

Cross-int. 60. Did you not sell said machinery to Hotchkiss & Merriman? If not, to whom did you sell it?

1060 Ans. I have no recollection of what disposition was made of it, it is so long since.

Cross-int. 61. When did you go to be employed in the factory of Hotchkiss & Merriman, and how long were you there?

(The witness asks if he is obliged to answer such questions relating to his private affairs, and not applicable to the case.

Complainant explains that he wants to trace some old looms and machinery, which he has been informed were sold to some Eastern manufacturers, and will have a bearing on certain kinds of suspenders made by them. Defendants' counsel objects to the question as not bearing upon the issue or applicable to the direct examination.

Complainant says that it has a bearing, as on former trials they have sworn that they did not realize anything from the agreement, and that it was a total loss.)

Ans. I think in 1852; I was there a little over a year.

Cross-int. 62. Did you go there before the partnership was formed by Wakeman & Whiting?

Ans. I never heard of such a partnership.

Cross-int. 63. What partnership did you form, under what names, in 1850?

Ans. I should be obliged to look at the old books to see. In 1850 it was B. Dodd & Co.

Cross-int. 64. State the names which formed the company.

Ans. B. Dodd and M'r's B. Dodd.

Cross-int. 65. Did you ever know of my selling any goods, when at Newark, aforesaid?

Ans. Not positively; orders were solicited by myself, by M'r Smith, and by M'r Wakeman. I sold the most of the goods.

Cross-int. 66. Can you state where M'r Smith solicited orders? If yea, state who they were, and where they resided.

Ans. I have no recollection of who they were. M'r Smith canvassed the market and said to M'r Brewster that he, Smith, could sell all the goods that he could make.

Cross-int. 67. Did you hear M'r Smith make such a statement to M'r Brewster? If yea, state where and when it occurred.

Ans. M'r Brewster so informed me.

1061 Cross-int. 68. When and where did he state this to you?

Ans. After he became a citizen of Newark, living in our vicinity.

Cross-int. 69. How long after my termination of business matters with you did this occur?

Ans. Some few years before his death. I think he lived there in our neighborhood some ten or twelve years.

Cross-int. 70. Would not that conversation be about 1860?

Ans. I think it was later.

Cross-int. 71. Was there not a lawsuit between you and Wakeman and M'r Brewster, relating to my agreement made with you in 1849?

Ans. No, sir.

Cross int. 72. What, then, did said lawsuit relate to?

Ans. What lawsuit?

Cross-int. 73. Between you and Wakeman and Brewster.

Ans. We never had a lawsuit.

Cross-int. 74. Were not you and M'r Wakeman arrested in a suit for forcibly entering and detaining, while I was in Newark?

Ans. I think that we were both served with a subpœna. I never heard of any arrest.

Cross-int. 75. Was not this suit carried up to the supreme court at Trenton?

Ans. I never heard of it. I never knew anything more than the little transaction at Newark. I never heard anything more about it after that.

Cross-int. 76. Was not that suit settled by M'r Brewster and M'r

Wakeman exchanging houses—M'r Brewster giving a house, I think, about the 3d or 4th Avenue in New York, and Brewster taking the house of Wakeman in Newark?

Ans. There is not a word of truth about it; it is simply humbug and nonsense.

Cross-int. 77. Did not M'r Brewster come to live in the house of M'r Wakeman in Newark?

Ans. Yes; and lived there ten or twelve years; he was a near neighbor, and a good man.

Cross-int. 78. Did not M'r David Hays, my attorney in Newark,
1062 have a paper delivered to him, purporting to come from me, and that all was arranged with me satisfactorily, and did not said Hays close up the suit, and did not you pay triple costs?

Ans. I have no recollection of seeing or hearing of a paper. I think I once saw an entry on our cash-book of about $25 for some law expenses about this petty trial you speak of.

Cross-examination by M'r Blake:

Cross-int. 79. When you gave your testimony in chief, or began to give it, did you have a memorandum in your hand; and, if yea, will you give it to me for examination?

Ans. I had a memorandum. I do not know that I care to give it for your examination; it contains some of my private affairs, and a great deal of it has no bearing in this suit.

Cross-int. 80. At whose request did you come here to testify?

Ans. At the request of my brother, George F. Dodd.

Cross-int. 81. When did he first speak to you about coming here to testify?

Ans. I think it was last spring.

Cross-int. 82. Prior to last spring, when did you last recall to your mind your transactions with M'r Smith, and what happened while he was at your factory?

Ans. I think the transaction was in 1857. I might have thought of it whenever I would meet him in the street; that would recall it to me. I have had no other occasion to recollect it. The transaction that I allude to was a trial in 1857.

Cross-int. 83. Have you, since 1857, and before last spring, had occasion to recall the facts you have stated in your direct testimony concerning M'r Smith's weaving and his goods made at your factory in 1849?

Ans. I do not think I ever passed a word with M'r Smith since that time about it.

Cross-int. 84. (Question repeated.)

Ans. I think it has been alluded to in a general way.

Cross-int. 85. When, where, and by whom?

1063 Ans. It was alluded to on the morning of the death of James T. Brady.

Cross-int. 86. Did you, before last spring, and since 1857, have any occasion to recall the facts connected with M'r Smith's weaving, and the goods made by him in your factory in 1849, to which you have testified this morning?

Ans. It has been referred to frequently since 1857, and before last spring.

Cross-int. 87. What have been the occasions that caused it to be referred to in that interval of time?

Ans. The trial and the goods, &c., were alluded to and spoken of by M'r Cutler, who was M'r Smith's counsel at that time.

Cross-int. 88. Have you had any reason, connected with your business, since 1857, and before last spring, which required or led you to recall M'r Smith's goods, their quality, their sale, or their appearance, or any other facts to which you have testified this morning? If so, what was that reason?

Ans. I think of it every time I buy me a pair of gaiter boots.

Cross-int. 89. State as nearly as you can how many pairs of gaiter boots you purchased between 1857 and last spring?

Ans. Perhaps a couple of pairs a year, and I have seen, perhaps, 10,000 pairs since. When I bought them I used to think that if M'r Smith made them like the boots and shoes, they would have been equal to the sample, and would have been a good thing.

Cross-int 90. I wish to know whether, since 1857, and before last spring, you have had any reason to recall the appearance of M'r Smith's goods, their unfitness for the market, and the attempts to sell them to which you have testified; and, if so, what reason other than that you have given?

Ans. I have been out of the market in that line for the last 10 or 12 years, and have had no occasion to buy or sell, and have had no interest in the goods.

Cross-int. 91. Were not most of the facts to which you have testified this morning recalled to your mind by the examination of your books?

1064 Ans. That, in connection with the positive knowledge I have had of the facts at the time and since.

Cross-int. 92. Will you produce your books and point out the entries which you have examined, and by which you have refreshed your memory in regard to the facts testified to by you?

Ans. I will.

(Counsel for complainant postpones the examination of the witness until the books shall have been produced.)

Examination further adjourned to Dec. 15th, 1869, at 10.30 a. m.

Deposition of Julius Hotchkiss.

NEW YORK, *December* 15, 1869—10.30 a. m.

Present, counsel as before.

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Julius Hotchkiss. I am 59 years of age. I reside at Middletown, Conn. I have been a manufacturer of webs and suspenders.

Int. 2. Were you a member of the last Congress of the United States?

Ans. Yes.

Int. 3. Please state the history of your experience as a manufacturer, giving the names of the concerns in which you have been connected.

Ans. In 1841, I think, I commenced with Mess'rs Pritchards, of Waterbury, to manufacture webbings. That concern was merged two years later in the concern known as the Hotchkiss & Merriman Manufacturing Company, and that concern was merged in the American Suspender Co., in 1856, 1857, or 1858; I cannot give the exact date. In 1855, I became interested in the Russell Manufacturing Co., and was its

1065 superintendent for several years. I am still a member of the Rus-

sell Manufacturing Co., though my interest in the others has ceased, I am the Hotchkiss in the Hotchkiss & Merriman Co., and of the first-named firm, which was known as the Hotchkiss & Pritchard Manufacturing Co. The latter was a special partnership, and the Hotchkiss & Merriman Co. a corporation established under the joint stock laws of the State of Connecticut. I was the active man in both of those concerns.

Int. 4. Look at the exhibits before you, and see if you recognize any like those woven by the Hotchkiss & Pritchard Co.

Ans. Exhibits 2, 4, 5, and 10, J. G., j'r, are the class of goods that were woven by them; also by the Hotchkiss & Merriman Co. When my relations with the Russell Manufacturing Co. commenced, they were making and continued to manufacture the same goods in an improved condition, during my connection with them, and they are making them now.

Int. 5. What became of the goods you have said were made by Hotchkiss & Pritchard, and the Hotchkiss & Merriman Manufacturing Co.?

Ans. They were sold in the markets in Boston, New York, Philadelphia, Baltimore, and other places, to the extent, by the Hotchkiss & Pritchard Co., of perhaps 200 dozen per week, and by the Hotchkiss & Merriman Co. alternately, to the amount of 2,000 dozen per week; that quantity embraces different qualities and kinds of webbing; one-quarter of the product was of the kind like the exhibits I have referred to.

Int. 6. In those goods, what covered the rubber warp-threads at the top and bottom?

Ans. In the class like the exhibits, simply the filling.

Int. 7. How was the filling bound to or held against the rubber cords or threads?

Ans. By what we called binding warps, which are between the rubber warps.

Int. 8. Did the filling threads pass entirely across one side of all the rubber warps, and then across the other side of all the rubber warps, excepting the weft-thread, in some instances, or did it go over some and under others, of the rubber warp-threads?

1066 Ans. It went over all the rubber warps and under all the rubber warps.

Int. 9. State whether, in that latter respect, so far as your experience extends, suspender webbing has been uniformly made in the same way, and woven in the same manner.

Ans. I have never known any made in any other way by the American manufacturers.

Cross-examination by M'r Blake, of counsel for complainant:

Cross-int. 10. What kind of rubber was used by these companies in the manufacture of suspenders?

Ans. Generally native gum, cut out of bottles.

Cross-int. 11. When the goods were being woven, were not the rubber cords drawn out to their extreme tension?

Ans. That was the intention.

Cross-int. 12. After the goods left the loom they were rigid, were they not?

Ans. Usually so.

Cross-int. 13. How did they become elastic afterwards, if at all?

Ans. By heating them between rollers, or ironing them with hot irons.

Cross-int. 14. How large was the threads of rubber in goods like Exhibit 2, J. G., j'r?

Ans. The threads in Exhibit 2 would determine that question.

Cross-int. 15. Do you mean that in the goods made by these companies prior to 1850, the rubber-threads were of the same size as those in Exhibit 2, and always were so?

Ans. Not always so. At the very first commencement the rubber was cut by shears from sheets, and was necessarily imperfect in size. As early as 1842, 1843, we had perfected machinery that made it uniform.

Cross-int. 16. Do you mean to be understood as saying that after 1842, 1843, you cut the strands from the rubber sheets by machinery?

Ans. I will place it as early as 1844.

Cross int. 17. Of whom did you purchase the rubber sheets?

1067 Ans. E. K. Corning & Co.

Cross-int. 18. Of where?

Ans. In New York; I think in Front street. The concern still exists.

Cross-int. 19. Were these sheets imported?

Ans. They were, and for this purpose.

Cross-int. 20. Do you know whose make the rubber sheets were?

Ans. I do not.

Cross-int. 21. Do you know what these sheets were imported for?

Ans. I suppose for this very purpose.

Cross-int. 22. Did you ever know them to be used to make shoes?

Ans. No, sir.

Cross-int. 23. Were they of such quality and thickness as to be fit to make marketable and useful shoes?

Ans. I think they would make a shoe equal to those of that period.

Cross-int. 24. How many threads of native gum were usually used in weaving goods like Exhibit 2, J. G., j'r?

Ans. Twelve, I should say.

Cross-int. 25. Invariably twelve?

Ans. No; that particular exhibit I mean. It depended on the quality of goods we wished to make.

Cross-int. 26. How many strands of rubber did you, prior to 1850, put in the different grades of goods made by you like Exhibit 2?

Ans. From eight to sixteen.

Cross-int. 27. When did you begin to use 12 strands, if you know?

Ans. I cannot say.

Cross int. 28. Can you swear it was before 1850?

Ans. Yes, sir.

Cross-int. 29. How long before?

Ans. As early as we cut gum by machinery.

Cross int. 30. By what number were goods like Exhibit 2 known in the market prior to 1850?

Ans. We made a great variety of suspenders of different numbers of the same web.

1068 Cross-examination by the complainant, M'r Smith:

Cross int. 31. When you gave your former testimony in this room in May, 1869, did you sign your deposition more than once?

Ans. I think not.

Cross-int. 32. Can you swear that you did not sign it more than once?

Ans. I cannot.

Cross-int. 33. How low did you remain in the room after I and M'r Blake and M'r Jenckes left it along with M'r Judson and E. H. Sawyer and others?

Ans. I think we left immediately after you did.

Cross-int. 34. When you were giving your deposition befor Loring

P. Waldo, in Hartford, in July or August last, why did you go out off the stand while giving evidence and call my witness, M'r Williams, out of the room to confer with him, and what was the nature of that conversation that you had at that time?

Ans. I did not give evidence in August. I think in the month of November I was with M'r Williams and did ask him a question aside, the object of which was to see if his ideas and mine corresponded in regard to the dates in which certain goods were made.

(Complainant wishes to correct the date of his question from July or August to October or November.)

Cross int. 35. Please state how your ideas corresponded, and mention the kinds of goods which you conferred together about?

Ans. Our ideas corresponded. I cannot recall the exact kind of goods which were the object of the question.

Cross-int. 36. Did you ever take out a patent for a suspender web or for attaching straps or buckles to a suspender? If yea, state date, &c.

Ans. I did take a patent in 1846 for attaching suspender ends to a buckle.

Cross-int. 37. Did you ever apply subsequently for a patent and the said application was rejected? Please state, if yea, what was the nature of your application, and the reason why it was rejected.

1069 (Objected to, as the only competent evidence is the record. Complainant replies that it will have much bearing on the evidence already given and that which is to come.)

Ans. I did once apply for a patent for these corrugated woven goods. The application was rejected, but the reason I cannot give.

Cross-int. 38. Please state the date.

Ans. I do not recollect it.

Cross-int. 39. Was it not in the year 1847?

Ans. It might have been.

Cross-int. 40. Was it not rejected in the year 1848?

Ans. I do not know.

Cross-int. 41. Did you ever apply at the Patent Office for any other patents than the two last mentioned?

Ans. I think not with reference to suspenders.

Cross-int. 42. State whether you applied at the Patent Office for any other patent than for suspenders. If yea, state what it was and the date.

Ans. I think in 1863 I obtained a patent for a skin cartridge.

Cross int. 43. Is that all the patents you have ever applied for?

Ans. I do not recollect any other.

Cross-int. 44. In your rejected patent applied for in 1847 and rejected in 1848, did not your specification say that you wanted a patent on the manner of attaching the buckle to the strap and not for corrugated goods either cemented or woven?

(Objected to as before. Reply as before.)

Ans. I cannot recollect.

Cross-int. 45. Did you send to the Patent Office any buckles and straps attatched to a fabric? If yea, please state what kind of a fabric it was.

(Same objection. Same reply.)

Ans. Those matters have all passed out of my mind, and I cannot recall them so as to give any information.

Cross-int. 46. Did you send a model and drawings on that application for the rejected patent of 1847–'8?

Ans. I think I did.

Cross-int. 47. Can you describe them? If yea, please do so.

1070 Ans. The corrugated goods that I desired to patent were made by placing several strands of rubber together and a wider intervening space between the rubbers than in the common made web, so that when finished they presented a corrugated or uneven surface resembling somewhat the goods known as corrugated goods at that period.

Cross int. 48. Did you describe those goods in your specification, and did you claim such goods in your claim for that rejected patent aforesaid?

(Same objection. Same reply.)

Ans. I cannot recall the wording of the specification. I have copy of it.

Cross-int. 49. Having previously obtained a patent in 1846, and being somewhat conversant with the rules of the Patent Office, would you not have sufficient knowledge at that period to know how to obtain a patent on any fabric, or, in fact, on anything else, you must describe it in your specification and claim it in your claim?

Ans. My business was done through an attorney; the rules I had not then studied.

Cross-int. 50. In all your applications for patents were not the petition, specification, and claim read over to you or by you before you signed your name to them?

Ans. Very likely—undoubtedly.

Examination resumed by M'r Dean:

Int. 51. At the time you invented the fabric resembling the then well-known corrugated goods was there a demand for that class of goods, and was you seeking to meet the demand then existing?

(Objected to as immaterial, and as assuming facts not proved.)

Ans. There was a demand and we were seeking to supply the demand.

Cross examination resumed by the complainant:

Cross-int. 52. Do you mean to say or to be understood that you invented woven corrugated goods, and were the first to make them?

Ans. I have no knowledge to the contrary.

1071 Cross-int. 53. Have you never heard or been told of their being in the market in 1844 or earlier than 1847?

Ans. I think I made them eighteen months or a year prior to the application for a patent, and that they were in the market at that time.

Cross-int. 54. Nearly all the witnesses for the respondents have already sworn that the samples came from the Russell Manufacturing Co. before they were manufactured by you and by others. Is that so?

Ans. I believe I am the first to make them, and that the others followed our lead.

Cross-int. 55. During the time or before or after Bethuel Dodd was in your employ in 1852 or 1853, did you purchase from Dodd & Wakeman, or from Dodd, looms and other machinery that was in Newark in 1850?

Ans. I would like to correct my testimony as to my having been superintendent of the Hotchkiss & Merriman Co. during the whole time to 1855. M'r Dodd was there for a time as superintendent, and if looms were purchased it must have occurred during his superintendence. I have no recollection of that fact.

Cross-int. 56. If M'r Bethuel Dodd was qualified to be your superintendent of the suspender manufactory, would he not be sufficiently qualified to describe how goods were made by seeing the fabric?

(Objected to as incompetent.)

Ans. He did not claim to be a weaver, but came there as business manager. He can best answer that question himself.

JULIUS HOTCHKISS.

Subscribed and sworn to before me this 15th December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1072 *Deposition of Thomas Creighton.*

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Thomas Creighton; I am 56 years of age; I reside in Brooklyn, N. Y.; I am a shoemaker.

Int. 2. How long has that been your occupation, and where have you carried on the business?

Ans. It has been my occupation for more than forty years. I never carried on the business on my own account until I came to this country some 27 or 28 years ago. I have been in business for myself in this country 26 or 27 years, about. My first place was at the corner of what was then known as Gowanus lane and Atlantic street, Brooklyn; next was in Smith street, near Wyckoff street, Brooklyn; after that at the corner of Columbia and Atlantic streets, Brooklyn; then at 37 Atlantic street, Brooklyn. Then I went off farming, and then came back and went into business again at 451 Columbia street, I think. During the last two years I have not been carrying on the business, though I work at the trade occasionally when I feel like it.

Int. 3. Did you ever use any elastic goring in the carrying on of your business?

Ans. Yes.

Int. 4. State when you first used it and from whom you obtained it?

Ans. I first used it about 21 years ago. I bought it from M'r Smith, the complainant. It might have been longer ago than that.

Int. 5. How are you able to fix the time?

Ans. I left that store in Smith street 20 years ago, and it was before that that I bought the webbing of M'r Smith.

Int. 6. Is there anything else that enables you to fix the date?

Ans. Yes; my son was born in Columbia street, and he is not quite 20 years now. Columbia street is where I moved to from Smith street.

1073 Int. 7. What kind of web did you buy of M'r Smith at that time?

Ans. The first web that I bought from him was a light brown worsted web, when broadcloth gaiters were getting into fashion. The next I bought from him was a drab color; the next was a black silk web. That is all I ever bought of M'r Smith.

Int. 8. Where were you when you bought the drab web, and where were you when you bought the black silk?

Ans. At the corner of Columbia and Atlantic streets, the store being in Columbia street, when I bought the drab web. When I bought the black silk I was at 37 Atlantic street.

Int. 9. Did you have any conversation with M'r Smith regarding the web? If yes, state what it was.

Ans. Nothing except the conversation between one man buying and the other selling. M'r Smith recommended it to me and told me he made the same in London; that it was purchased there; that was at the

first time I ever bought web from him. When I bought the black web from him we had a conversation. He told me he made this web for a man by the name of Constant, and that Constant and he differed in some way with regard to the web, and he came to my store with it and I bought it.

Int. 10. What were the amounts that you bought of M'r Smith on each occasion?

Ans. I will give it to the best of my knowledge, if that will do. I think the first time it might have been from four to six yards; the second time I did not buy so much; I might not have bought more than three yards of the drab; the last time it may be from four to six yards; I disremember exactly.

(M'r Smith, before cross-examining the witness, says to him as follows: "I wish to say one thing before examining you: as to dates there may be mistakes made, but as to any conversation on my part about England, that is a deliberate falsehood."

M'r Dean desires that the above remark shall be noted on the record as being an improper attempt to intimidate the witness, he having cautioned M'r Smith against saying anything when he commenced.

The complainant's counsel desires to say that the complainant does not desire this to go on the record, and that he disclaims all desire to intimidate the witness.

1074 M'r Dean says that if this had been but the first or second time M'r Smith made a similar remark, he would not have insisted on its going on the record.)

Cross-examination by M'r Smith, the complainant:

Cross-int. 11. When were you first called upon in regard to giving testimony in this case, and who called upon you?

Ans. The first time I came I came accidentally. A man by the name of Ashwood told me that this was going on; an Englishman not long in this country; he lived in my house.

Cross-int. 12. State the conversation you had with him and what was said?

Ans. He told me he was notified by some lawyer that came to M'r Ferris' shoe store in Nassau street with regard to the quality of the web, and that he had seen it in London long ago—years before he came here at all; and I told him that I had bought it of this same gentleman (pointing to M'r Smith) 20 years ago; and that is how I became interested in it. I am not interested in it either.

Cross-int. 13. Did he mention the name of that lawyer that went to M'r Ferris' store?

Ans. No, sir; I had my suspicions that it might be somebody.

Cross-int. 14. Did M'r Dodd, sitting at your right hand, ever call upon you regarding you giving your testimony here?

Ans. I think I did see this gentleman. I do not know whether his name is Dodd.

Cross-int. 15. Is not that the lawyer referred to as calling at M'r Ferris' store?

Ans. I do not know one word about it.

Cross-int. 16. How many times has M'r Dodd called upon you, and state the conversations you had each time he called upon you?

Ans. He called on me once, may be two or three weeks ago, about. We had no conversation, good or bad, connected with rubber, only that there was a suit going on.

Cross-int. 17. Was his only object in calling on you in Brooklyn to tell you that a suit was going on?

Ans. I could think nothing else. I never saw the man till then. I think that must have been his business to bring me over.

1075 Cross-int. 18. Did he not say that he wanted you to give testimony here in this case?

Ans. Yes; and I told him that my testimony was no good to him, and that I did not want to come.

Cross-int. 19. Please state all the conversation that passed at that time.

Ans. M'r Dodd and I had not a word, good or bad. I came to the office and then we had a conversation, not with M'r Dodd, though.

Cross-int. 20. Did you come to this office voluntarily, without being invited to come to give testimony here?

Ans. I did by a letter or note, whichever you may call it, that came to me to come over.

Cross-int. 21. Have you got that letter with you?

Ans. No, sir.

Cross-int. 22. Will you produce it and annex it to your testimony?

Ans. Yes; I can do that.

Cross-int. 23. When will you do it?

Ans. I can do it to-morrow or next day, or this day if I go after it.

Cross-int. 24. Will you annex it to your testimony to-morrow?

Ans. Yes; if I am called on to-morrow, I will.

Cross-int. 25. I call on you now to produce it and annex it to your testimony to-morrow; will you do so?

Ans. Yes.

Cross-int. 26. Have you had any inducements held out to you to come here and give testimony? If yea, say what they are.

Ans. No, sir; I could not be induced to give testimony; nor all that either of the parties is worth could do it.

Cross-int. 27. Do you mean to say that you bought webbing of me in the year 1849?

Ans. Yes, sir; I do.

Cross-int. 28. Please state what part of the year it was in in 1849.

Ans. To the best of my knowledge, it was coming on in the fall of the year.

Cross-int. 29. Where did you reside at that time?

Ans. In Smith street, between Wyckoff and Bergen.

1076 Cross-int. 30. At what place were you, and where did you buy that webbing of me in the fall of 1849?

Ans. In my store, which I designated, in Smith street.

Cross-int. 31. What was the number of that store in Smith street?

Ans. The streets were not numbered at that time; any one put up whatever number they liked to designate it.

Cross int. 32. What was the name of your landlord of that store in Smith street?

Ans. James Quigley; he is now dead.

Cross-int. 33. Where did he reside at that time?

Ans. Next door to me.

Cross-int. 34. When did you leave that store in Smith street, and where did you go to from there?

Ans. It is over 20 years since I left that store, and from there I went to Columbia street.

Cross-int. 35. State the number in Columbia street, and the name of your landlord.

Ans. It was not numbered; John McLean owned the house; he was a butcher at that time.

Cross-int. 36. How long did you remain on those premises?

Ans. I think about one year.

Cross-int. 37. Where did you remove to from there?

Ans. To 37 Atlantic street.

Cross-int. 38. Who was your landlord, his name and residence?

Ans. It was owned by some brothers when I first moved there; Cyrus P. Smith was the agent. It afterwards got into the hands of M'r Frost—Jacob Frost, I think.

Cross-int. 39. Was Cyrus P. Smith the agent of whom you first took it? If yea, please state his residence.

Ans. He was; his office was in Fulton street, Brooklyn; he and one Lowrey were, I think, in partnership. I do not know the number.

Cross-int. 40. What year did you take that store?

Ans. About 19 years ago; about 1850. I occupied the two for awhile; my lease of McLean's had not run out.

Cross int. 41. Was not that the first time you ever saw me, while you were in that store 37 Atlantic street?

1077 Ans. No; I swear it was not.

Cross-int. 42. Did you not, the first goods you bought of me, if I sold you any—I do not remember it—was it not about nine inches or half a yard, as a trial?

Ans. No; it was about six inches wide.

Cross-int. 43. Do you mean to say the web I sold you was six inches wide?

Ans. About that; it might have been half an inch wider; it was nothing like nine inches wide at all.

Cross-int. 44. How high did you cut your Congress boots at that time, when you say you bought goods of me?

Ans. That would seem to depend on the way the persons would leave their measures; sometimes one way, sometimes another.

Cross-int. 45. Please state how wide the goods were that I sold to you the second time?

Ans. About the same breadth as the other one—that was the drab color—about six inches, as I told you before.

Cross-int. 46. Please state how wide the goods were when you say you bought goods of me the third time.

Ans. I consider them to be from seven to eight inches wide; by far better a material than the others.

Cross-int. 47. Do you know of any one else at that period that used gores in their Congress boots from six to eight inches wide? If yea, please state who they were.

Ans. No; I do not.

Cross-int. 48. Is that statement as true about the width of the gores as any other testimony you have given to-day?

Ans. Yes; as far as my knowledge goes.

Cross int. 49. Will you swear that you ever saw woven goring seven inches wide in your life anywhere?

Ans. I do not know more than the piece I got from you. Whether it was woven or spun, I do not know.

Cross-int. 50. I repeat the question about the width of the gores. Will you swear that that is as true as any testimony you have given to-day?

Ans. I swear that to the best of my knowledge, and that is the truth.

1078 Cross-int. 51. Is it as true about the width of the gores as it is

about your statement of the conversation that you say you had with me about the goods being made in London?

Ans. You told me emphatically that you had sold these goods in London. Whether you wanted to prejudice my mind to buy them, I do not know, and that they were well thought of there.

Cross-int. 52. (Question repeated.)

Ans. I am giving my opinion about the breadth of the gores—the conversation I swear to.

Cross-int. 53. Do you mean to say in your testimony that you have given here in your direct and cross examination that you do not swear to it?

Ans. I swear as to the breadth of the gores as to my knowledge, but the other I swear to positively as to the conversation about their being sold in London.

Cross-int. 54. How near can you swear positively about the breadth of the gores?

Ans. I have done all that I can say about it.

Cross-int. 55. Swear again, if you please, and say how near from six to eight inches, as you have stated, you can swear to.

Ans. The nearest I can go to either of the drabs is six inches—the black was wider.

Cross-int. 57. Is that last answer as true as any other evidence you have given to-day in this case?

Ans. Yes.

Cross-int. 58. Please state in what year it was that you had that conversation with me in which you say that I said I had sold the goods in London.

Ans. In 1848.

Cross-int. 59. Where did you reside at that time, and where was your place of business?

Ans. I resided in Smith street, Brooklyn, between Wyckoff and Bergen. That was also my place of business.

Cross-int. 60. Did you buy any elastic goring of me at that time when this conversation happened?

Ans. Yes; I bought the light brown color from you; that was how you recommended it to me as having sold it in London.

1079 Cross-int. 61. Please state what part of the year 1848 it was in.

Ans. To the best of my knowledge it was in the fall; it was coldish weather.

Cross-int. 62. What time in the fall?

Ans. I think early.

Cross-int. 63. Please state what you call early.

Ans. About October or November.

Cross-int. 64. Are you certain it was not in 1849?

Ans. I am certain it was not in 1849.

Cross-int. 65. Do you mean to come here and swear, as you have done this day—perjured yourself in falsehood by your own mouth voluntarily?

Ans. No such thing at all. You were going round from door to door peddling little pieces of web, and I bought from you from charity, and now you come here and charge me with perjury.

Direct examination resumed by M'r Dean:

Int. 66. Look at Exhibits 3, 7, and 8, J. G., j'r, and state whether the web sold you by M'r Smith resembled them.

Ans. To my knowledge No. 8 is about the width of the goring I got from

M'r Smith. It was as good goring as that. It appeared to me woven like this, but I am no judge of weaving. I do not see any pieces here like the brown or drab. I should suggest that the general manner of putting them together and getting them up was the same.

Cross-examination resumed by M'r Blake:

Cross-int. 67. Of whom did you purchase your webbing for shoe-gores in 1848 and 1849?

Ans. Of M'r Smith.

Cross-int. 68. Was his webbing the first you ever purchased?

Ans. Yes.

Cross-int. 69. What had you previously used for gores in boots and shoes?

Ans. I never used any for goring.

1080 Cross-int. 69½. When did you begin to make gored boots and shoes as a business?

Ans. In 1848, after I bought that web from M'r Smith.

Cross-int. 70. After 1848 did you constantly, as a part of your business, make gored boots and shoes?

Ans. Only occasionally, when I got an order. I made to measure. I was not a manufacturer.

Cross-int. 71. The boots and shoes that you made with M'r Smith's web were the first gored boots and shoes you ever made, were they?

Ans. Yes.

Cross-int. 72. After you bought M'r Smith's web where did you get your web to make gored boots and shoes?

Ans. For years after that I gave up making gored boots and shoes. I made application to M'r Goodyear, but, as I would have had to pay a bonus, I gave up making them. I had the drab and brown colored web from M'r Smith; that was the time I was trying to get web, and then M'r Smith came again, and I bought the third piece from him.

Cross-int. 73. How long before you applied to M'r Goodyear did you get the first piece of web from M'r Smith?

Ans. It might be two years; I think it is more than two years.

Cross-int. 74. Was there an interval of two years between the time of your first purchase and your last purchase of webbing from M'r Smith?

Ans. Yes; I guess there was.

Cross-int. 75. What M'r Goodyear was it, and what kind of webbing did he have?

Ans. The Goodyear that I have reference to was a man that had a suit about rubber a good many years ago. He lived at that time in Broadway, or near towards the city hall—between Trinity Church and the city hall. I did not purchase webbing from him, and I cannot say what kind it was; it seemed to be very good webbing.

Cross-int. 76. Was it like M'r Smith's?

Ans. I think not.

Cross-int. 77. How did it differ from M'r Smith's?

1081 Ans. To the best of my knowledge his was white on one side, and M'r Smith's was not; as far as the elasticity was concerned they were both alike.

Cross-int. 78. What kind of webbing was generally in use for shoe-gores in 1849 and 1850?

Ans. There was very little in use. I could not say.

Cross-int. 79. Were the gored shoes you made with M'r Smith's webbing the first gored shoes you ever saw?

Ans. No.

Cross-int. 80. What kind of goring was used in the first gored shoes you ever saw?

Ans. I saw it first in ladies' work. It was of a black color. I am not able to give the quality of the gore.

Cross-int. 81. Do you remember when you first saw gored shoes? If so, when was it?

Ans. Yes; I saw them with an English lady, maybe a year or more before I bought from M'r Smith. Her gaiters came to my house to be repaired.

Cross-int. 82. Have you seen M'r Smith between the last time you say you bought goring of him and the present time? and, if yea, when?

Ans. I have. I think I was fifteen or sixteen years without seeing him. I met him in the Bowery. I thought he was dead—and I stopped to speak to him, but he did not recognize me, and I walked on about my business.

THOMAS CREIGHTON.

Subscribed and sworn to before me this 15th day of December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1082 *Deposition of Bethuel Dodd, recalled.*

Cross-examination by M'r Blake, of counsel for respondents:

Cross-int. 93. What memoranda do you find on your books by which you have refreshed your memory in regard to the transactions which you have spoken of in your direct testimony?

Ans. The memoranda that occurred daily and weekly at that time.

Cross-int. 94. Please find and point out the earliest one in your books.

Ans. John Thornley, March 19, 1850, Philadelphia, charged with 88½ yards of cotton, silk warp, shoe web; 12 yards, at 50 c'ts per yard; 12 yards silk web at 75 c'ts, the two amounting to $53.25, in Dodd & Wakeman's day-book.

Cross-int. 95. Does that entry tell you by whom the goods were sold?

Ans. No, sir.

Cross-int. 96. Does any entry in the books that you have found tell you by whom they were sold?

Ans. I do not know that they do.

Cross-int. 97. Please state from your books when you imported fine cotton from abroad, which you said was done at M'r Smith's request.

Ans. I find that from October, 1848, to January, 1851, there was about $8,000 worth of goods imported, and in the importation was German cotton and English cotton. I get this from an importing-house in gross amounts. The invoices are marked, but supposed to have been lost, given away, or destroyed.

Cross-int. 98. Please read to the examiner the entries to which your answer refers.

Ans. I cannot designate the entry, but in the importation from that house there was cotton:

1848.	Oct. 16.	Invoice No. 8	$52 00
	" " 27.	Invoice " 10	166 50
1083	1849. Sept. 27.	Invoice No. 6	724 20

1849.	Oct.	26.	Invoice No. 7		87 20
1849.	Sept.	10.	Invoice No. 4		330 00
"	Dec.	31.	Invoice " 17		215 00
1850.	Feb'y	23.	Invoice " 18		366 88
"	"	26.	Invoice " 18		708 54
"	March	29.	Invoice " 21		385 73
"	April	4.	Invoice " 22		899 79
"	"	24.	Invoice " 24		215 00
"	"	24.	Invoice " 24		549 79
"	May	23.	Invoice " 26		210 90
"	July	20.	Invoice " 32		228 83
"	Sept.	4.	Invoice " 38		236 66
"	"	4.	Invoice " 38		570 79
"	"	30.	Invoice " 44		1,821 00
"	Oct.	2.	Invoice " 45		272 78
"	Nov.	2.	Invoice " 413		18 60
"	Oct.	7.	Invoice " 48		11 79
"	Nov.	8.	Invoice " 50		5 82
1851.	Feb'y	8.	Invoice " 64		2 75
"	March	6.	Invoice " 63		62 50
"	"	7.	Invoice " 74		62 50
"	April	15.	Invoice " 505		1 94
"	Sept.	20.	Invoice " 524		5 38

Of R. A. & J. H. Witthaus.

Cross-int. 99. Which of these entries relates to the cotton ordered by you from England or Germany by M'r Smith's direction?

Ans. The invoices being lost or destroyed, it is impossible for me to tell, only I know from my best recollection that there was cotton received.

Cross-int. 100. State, from your books, when you bought a pair of cone-pulleys from M'r Smith, of New York.

Ans. I have looked in the ledger of Dodd & Wakeman for the years 1849 and 1850, under the name of Smith, and do not find any reference to cone-pulleys, referred to in cross-question 38, on December 14, 1869. I have not looked under any other name.

1084 Cross-int. 101. Were you a member of the firm of Whiting, Dodd & Co.?

Ans. Yes, sir.

Cross-int. 102. When was that firm formed, and who were its partners?

Ans. The partners were John P. Waterman, M'r Whiting and B. Dodd. I have no memorandum with me stating when it was formed.

Cross-int. 103. When was it dissolved?

Ans. I have no memorandum showing that. It was of short duration, and I have forgotten.

Cross-int. 104. When was the firm of B. Dodd & Co. formed, before or after the firm of Whiting, Dodd & Co.?

Ans. September 3, 1850.

Cross-int. 105. How long did it continue in existence?

Ans. It continues to the present day.

Cross-int. 106. Was not a contract made on Dec. 11, 1850, between Sebastian Oberle and Whiting, Dodd & Co.?

Ans. I have no recollection of it.

Cross-int. 107. Will you now look through the paper I hand you, and again answer that question?

(Paper handed witness.)

Ans. I have no recollection of ever seeing that before. I have no recollection of a contract being made.

Cross-int. 108. Have you a brother named E. V. B. Dodd, and where is he now?

Ans. I have. I cannot say where he is now. He lives in Halsey street, Newark, New Jersey. He is bookkeeper for Holmes, Booth & Hayden.

Direct examination resumed by M'r Blake:

Int. 109. Look at your cash-book and read the items of cash received on sales of web made by M'r Smith prior to October 16, 1850.

Ans. I have had a memorandum taken from the cash-book. I produce it—it contains the items.

(Memorandum annexed and marked Exhibit O, J. G., j'r.)

1085 Int. 110. Can you tell who made those sales?

Ans. I made the first sale to M'r Thornly. As to the others I cannot say, more than I have already testified to.

Int. 111. What was the motive power of your factory; for what was it used, and was the power regular and steady, or otherwise?

Ans. Steam-engine was the power. We rented a portion of it to drive the machinery for a buckle manufactory, under the weaving manufactory, who used it before and after. We never had any complaint of the power. It was steady power.

B. DODD.

Subscribed and sworn to before me this 15th day of December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to December 21, 1869, at 10.30 a. m.

NEW YORK, *December* 21, 1869—10.30 a. m.

Examination adjourned to December 28, 1869, 11 a. m.

Deposition of John Eabry.

NEW YORK, *December* 28, 1869—11 a. m.

Present, M'r Gifford, of counsel for defendants, and M'r Keller, of counsel for complainant, and M'r Smith, complainant in person.

Direct examination by M'r Gifford, of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John Eabry; I am 39 years of age; I reside at Williamsburg, N. Y.; I am an elastic web manufacturer.

Int. 2. Do you carry on the manufacture of elastic webbing on your own account, or are you in the employ of another party?

Ans. I am in the employ of another party.

Int. 3. What was your native place?

Ans. England.

1086 Int. 4. Did you learn any trade of any kind? If yea, what?

Ans. I learned weaving—nothing else, ever.

Int. 5. How long have you followed weaving?

Ans. Ever since I was about 17 years of age.

Int. 6. When did you first come to this country from England?

Ans. I believe in 1848 or 1849, I am not sure which.

Int. 7. If you again returned to England, state when it was, and how long you remained there on such return.

Ans. I returned there in 1851, and remained there until 1853, and then came back to this country.

Int. 8. When, if at all, did you again go to England, after such return here, and how long did you remain there at that time?

Ans. I returned to England in 1860 or 1861, I am not certain which. I remained there about 5 or 6 months that time, and then came back here.

Int. 9. If you again went to England, state when it was, and how long you remained there at that time.

Ans. I went in the fall of 1868. I was there two months at that time.

Int. 10. Are you acquainted with an elastic fabric in which rubber cords were covered only by filling threads, and which has fibrous threads as warp crossing each other between the rubber cords?

Ans. Yes, sir.

Int. 11. In what way or ways have you known it to be woven with respect to the rubber cords remaining stationary or being moved up and down for the passage of the shuttle?

Ans. I have known it to be woven both ways.

Int. 12. Which is the best way?

Ans. The best way is the movable rubber cords.

Int. 13. Where and when did you know of its being woven with the rubber cords stationary?

(Objected to, as it does not appear from the answer that this witness had prior knowledge of the complainant's invention.)

Ans. That was in 1851, at Nichols, Leahy & Co.'s, in Leicester, Leicestershire, England.

(Answer objected to so far as regards its being done in a foreign country, as incompetent.)

1087 Int. 14. How early did you know of its being woven by moving the rubber cords up and down to make room for the shuttle?

(Same objection as to question 13.)

Ans. It was being woven at the same time, but how long before I could not say, not being acquainted with it.

Int. 15. When you were in England in 1868, how was that kind of webbing woven there then, respecting the rubber cords remaining stationary, or being moved up and down?

(Objected to as immaterial.)

Ans. What I saw woven then was movable.

Int. 16. Did you find at that time that any was being woven there by keeping the rubber cords stationary?

(Same objection.)

Ans. I did not see any there at that time.

Int. 17. How was it at that time, that is in 1868, at the establishment where you say in 1851 the stationary rubber cords were used?

(Same objection.)

Ans. I could not say anything about it. I was not there to see what was being used—not in the mill.

Int. 18. Please look at complainant's Exhibit A, and at the piece cut off from it, now shown to you, marked N. Y. at the corner of the label, and state how the webbing, of which those pieces are specimens, was woven respecting the rubber cords being stationary or movable.

Ans. These are made by a movable warp.

Int. 19. Look at defendants' Exhibits 7, 8, 9, and 11, J. G., j'r, and

state how they were woven; whether with a movable or stationary warp.

Ans. No. 7 is movable warp; No. 8 and No. 9 are stationary warp; No. 11 is movable warp.

Int. 20. Do you know William Smith, the complainant, and, if yea, how long have you known him?

Ans. I do know him. I think I have known him since 1853.

Int. 21. Did he at any time, and, if yea, when, apply to you to aid him in weaving elastic webbing?

Ans. I went to work for M'r Smith either in 1853 or 1854, I cannot say which year; I think it was in 1853.

1088 Int. 22. Where was he at that time?

Ans. He was up on the avenues; in one of the streets between the avenues in the city of New York; in one of the streets between 35th and 37th streets.

Int. 23. What did M'r Smith say that he wanted you to do there respecting weaving the elastic webbing?

Ans. I went there to run a narrow loom when I was at Smith's, and he was making this gore web at the same time, and I told him that he would not make it without fixing his loom different from what it was, and he asked me why, and I told him it was not fixed right for it. He asked me whether I would fix it for him, and I told him it would not pay me to do it.

Int. 24. When he asked you to fix his loom, did he say anything about what had been done in England, and, if yea, what?

(Same objection as to question 13.)

Ans. He asked where I had been at work, and I told him. I do not recollect what passed after that.

Int. 25. Did he say anything about your fixing his loom like those which had been used in England, and, if yea, what did he say respecting that?

(Same objection as to question 13.)

Ans. No; I do not recollect anything being said about it, only what was said in the previous question.

Int. 26. At that time did you see any of the webbing which M'r Smith had woven?

Ans. I saw some on the loom that had been woven.

Int. 27. What was its quality compared with what you had seen in England?

(Objected to as to question 13.)

Ans. It was nothing to be compared with the English goods.

Int. 28. What do you mean by your last answer? Please explain.

(Objected to as before.)

Ans. That the English goods, as a general thing, lay level when they come out of the loom; but in these that I saw at M'r Smith's the edges were all crumpled up.

Int. 29. Did M'r Smith at the time say anything to you about

1089 aiding him or showing him how to improve their quality; and, if yea, what?

Ans. He asked me if I would fix it, and he would pay me for it; that was all that was said.

Int. 30. How many shuttles were used in the looms which you saw used in 1851, in England, weaving with the rubber cords stationary?

(Same objection as to question 13.)

Ans. Eight shuttles.

Int. 31. I mean how many in each loom.

Ans. Sixteen; eight at top and eight at the bottom.

Int. 32. How many widths of the elastic webbing were being woven on one of the looms at a time?

(Same objection.)

Ans. Only about two widths; five inch and four and a half inch.

Int. 33. How many webs were woven on one of the looms at a time?

Ans. On some there would be 20 pieces and some only 8 pieces.

Int. 34. How many shuttles were used for each piece of webbing?

Ans. Two shuttles.

Int. 35. State whether or not the Union webbing was woven at the times you have mentioned, in England, by having the rubber cords move up and down.

(Same objection as to question 13, and because it assumes, what does not appear from the testimony, that the witness understands what is meant by Union webbing, and because it is leading.)

Ans. In 1851, yes.

Int. 36. How was it in 1868, when you were again in England?

Ans. They were using movable warp in making the Union fabric.

Int. 37. What do you mean by Union webbing?

Ans. It is a silk face and a cotton back.

Cross-examination by M'r Keller:

Cross-int. 38. What business did you engage in when you first came to this country from England?

Ans. I was weaving silk fringes when I first came.

1090 Cross-int. 39. On your own account, or as a journeyman, or in company with others? State particularly.

Ans. As a journeyman.

Cross-int. 40. For whom were you working as a journeyman?

Ans. Hobbly Brothers.

Cross-int. 41. How long did you continue to work for them weaving fringes?

Ans. I could not tell how long.

Cross-int. 42. Give it to the best of your recollection.

Ans. It might have been a year or a year and a half. I am not certain how long; it was over a year.

Cross-int. 43. How long after you first arrived in the country did you go to work for them?

Ans. About two months after I arrived here. It was 1849 when I first arrived here; about 1849; I am not certain.

Cross-int. 44. Why did you leave off weaving fringes for Hobbly Brothers?

Ans. Because there was nothing to do.

Cross-int. 45. Did you go to work at anything else? If so, what?

Ans. I cannot recollect what I did do after that, whether I went to work at anything before I went to England or not. I am not certain whether I worked for M'r Smith before I went to England, or whether it was after.

Cross-int. 46. Were you not one of a party who started a factory?

Ans. Yes, sir.

Cross-int. 47. What was that factory for?

Ans. For manufacturing silk fringes. We commenced in the fall of 1853 or 1854, I believe—just after I left M'r Smith's place.

Cross-int. 48. Who were your associates in that enterprise?

Ans. The firm was White, Curtis & Eabry.

Cross-int. 49. How long did that business continue?

Ans. Until 1858.

Cross-int. 50. What became of it then?

Ans. It was a failure then. It failed in 1858.

Cross int. 51. What, if any business, did you engage in between the time you stopped working for Hobbly Bro's, and your first return to England?

1091 Ans. I do not recollect that I did anything from the time I left them until I came back. I am not certain whether I worked for M'r Smith before I went or whether it was after. I know I worked for him after I came back, but whether also before I cannot recollect.

Cross-int. 52. What was the given name of Curtis & White, your former partners?

Ans. Richard White and William Curtis.

Cross-int. 53. Do you know where they are now?

Ans. No, sir; I do not.

Cross-int. 54. Did you know Adolph Marr, who worked for the plaintiff, M'r Smith?

Ans. I do not know any one by that name.

Cross-int. 55. Did not he work for Smith at the time you worked there?

Ans. I cannot say what his name was; I never heard it. There was a German working there, but I do not know what his name was.

Cross int. 56. On which of the looms did the German work, and on which did you work?

Ans. The German worked on the wide loom, and I worked on the narrow one.

Cross-int. 57. How long did you work for M'r Smith at the time this German worked for him?

Ans. I could not tell exactly. It might have been two, it might have been three, months.

Cross-int. 58. Did you work for Smith at any time when that German was not there?

Ans. Not that I recollect. I think he was there all the time that I was; I am not positive.

Cross-int. 59. Did you see any other person working as a weaver at M'r Smith's when you worked there?

Ans. Not that I recollect. M'r Smith used to weave a little himself once in a while.

Cross-int. 60. Did not M'r Smith discharge you?

Ans. No, sir.

Cross-int. 61. Why did you leave his employ?

Ans. I started in business for myself with the firm I have mentioned—Curtis, White & Eabry.

1092 Cross-int. 62. Did not Joseph Connor, of Beaver street, N. Y, wind up your firm at the time of your failure?

Ans. No, sir.

Cross-int. 63. What was the cause of your failure?

Ans. Bad debts.

Cross-int. 64. Was not your firm indebted to Joseph Connor at the time of your failure?

Ans. Yes, sir.

Cross-int. 65. How long were you in that business from the time of first starting until your failure?

Ans. Some four or five years I think it was.

Cross-int. 66. After that failure what business did you go into?

Ans. I did not go into any business until after I came back from Europe.

Cross-int. 67. Were you idle during the whole time between the time of your failure and your return to England? If not, what were you engaged in?

Ans. I returned soon after that. It was not a great while between.

Cross-int. 68. State, as near as you can, how long it was after your failure that you went back to England?

Ans. It might be nine months or twelve months, or it might be a little more; I cannot say.

JOHN EABY.

Subscribed and sworn to before me this 28th day of December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of Baldwin Beecher.

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Baldwin Beecher. I am 60 years of age. I reside at New Haven, Conn. I am a builder. I have worked at building looms for about four years.

1093 Int. 2. Did you ever work for the firm of Hotchkiss & Pritchard? If yea, state when, and what at.

Ans. I did. I went there in the spring of 1841, and worked at building looms for them.

Int. 3. Did you build any loom for them for weaving elastic webbing and using rubber cords?

Ans. I did.

Int. 4. What kind of a loom was it? Were the rubber cords in that loom to remain stationary during the weaving or to be moved up and down, which?

(Objected to as leading.)

Ans. To be moved up and down.

Int. 5. Did you make any loom for them in which the rubber cords were to remain stationary?

(Objection repeated.)

Ans. I worked on one loom that was run but little. I do not know whether the cords on that was intended to remain stationary or to be moved up and down.

Int. 6. Do you know whether or not the cords of rubber on it when it was used did remain stationary or were run up and down?

(Objected to as leading, the witness having already testified that he did not know.)

Ans. I do not know how that was to be operated.

Int. 7. Do you know whether that loom employed two or only one shuttle in weaving a piece of webbing?

Ans. Two.

Cross-examination waived.

BALDWIN BEECHER.

Subscribed and sworn to before me this 28th December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1094 *Deposition of John H. Buckley.*

Direct examination by M'r Gifford, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John H. Buckley. I am 32 years of age. I reside at Easthampton, Mass. I am a weaver by trade.

Int. 2. Are you acquainted with the elastic webbing in which India-rubber cords are covered at top and bottom by filling threads only, and which has fibrous warp threads interwoven with the filling between the rubber cords?

Ans. Yes, sir; practically.

Int. 3. What was your native place?

Ans. Leicester, England.

Int. 4. When did you first come to this country?

Ans. In the latter part of August or beginning of September, 1860. I left England on August 13, 1860.

Int. 5. Did you know of such webbing being woven in England before you left there?

(Objected to, this witness not being named in the answer as possessing prior knowledge of the invention claimed by the plaintiff.)

Ans. Yes, sir.

Int. 6. How was it done; with the rubber cords held stationary or being moved up and down, or both? State.

(Objected to as leading.)

Ans. It was manufactured in England both ways extensively.

Int. 7. Which is the best way?

Ans. The movable rubber warp for the elastic gusset web.

Int. 8. You say you came from England to this country in 1860. Did you subsequently go back to England? If yea, when, and how long did you stay?

Ans. I returned to England in September, 1868, and returned to this country in November, 1868.

Int. 9. When you returned to England in 1868, how did you find
1095 that kind of fabric being manufactured there then as respects the rubber threads being held stationary or moved up and down?

Ans. I found the manufacturers using the movable warp, and did not find any that were in favor of using the stationary warp.

Int. 10. Were they then making the Union fabric as well as the other kind?

Ans. Yes, sir; all kinds used for gores in gaiter-boots.

Int. 11. How early did the manufacture of this kind of fabric in England come to your knowledge?

(Same objection as to interrogatory 5.)

Ans. I had heard of it as early as 1848 or 1847.

(Objected to as hearsay.)

Int. 12. How early did you know of it, of your own knowledge, being made there?

(Same objection as to interrogatory 5.)

Ans. I wove it there myself with the movable warp in 1853, on a double shuttle loom, and I know of its being done for years earlier than that.

Cross-examination by M'r Keller (not waiving objections), counsel for complainant.

Cross-int. 13. What do you mean by Union web?

Ans. Elastic Union web, as known to weavers, has a silk filling that

covers the rubber on one side, and a cotton filling that covers the rubber on the other side; or cotton back and silk face.

Cross-int. 14. Are you now engaged in the business of weaving elastic goods, or employed in any establishment engaged in that business, and if so, what establishment?

I am now employed by the Glendale Elastic Fabrics Company.

JOHN H. BUCKLEY.

Subscribed and sworn to before me this 28th December, 1869.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to Thursday, December 30th, 1869, at 10 a. m.

1096 DECEMBER 30, 1869—10 a. m.

Present, M'r Gifford, of counsel for respondents, and M'r Smith, complainant, in person.

Defendant's counsel puts in evidence printed copy of the specification of English letters patent, granted to Nichols, Ball & Bagley, dated in 1851, and numbered 13,880. It is marked Defendants' Exhibit P.

Also printed copy of English letters patent, granted to Christopher Nichols, dated in 1847, and numbered 11,729. It is marked Defendants' Exhibit Q.

Also printed copy English letters patent, granted to James Vincent Dergrand, dated in 1832, and numbered 6,334, and which is marked Defendants' Exhibit R, J. G., j'r.

Examination adjourned to December 31, 1869, at 10 a. m.

NEW YORK, *December* 31, 1869—11 a. m.

Examination adjourned to January 5, 1870, at 12 m.

Deposition of Ferdinand Doebley.

NEW YORK, *January* 5, 1870—12 m.

Present, M'r Dean, of counsel for respondents; M'r Blake, of counsel for complainant; M'r Smith, complainant, in person.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Ferdinand Doebley; I am 46 years of age; I reside at Philadelphia, Pa.; I am a manufacturer of reeds and heddles for weaving.

1097 Int. 2. How long have you been engaged in that business?

Ans. Ever since I was seven years of age I have been working at it, and doing business for myself about 40 years. I have been in business on my own account since 1850.

Int. 3. For whom and in what capacities did you work before 1850?

Ans. I was connected with my father, working for him from 1831–1832 to 1850. I attended to the out-door business for my father; from 1841 to 1849 or 1850 he was engaged in two different businesses; one was this reed and heddle business, and the other was the webbing and suspender business. My father died in 1865. His name was Solomon Doebley.

Int. 4. When did your father first begin to make elastic suspenders, and how long did he continue in that business, and who succeeded him in the business?

Ans. He carried on the webbing business from the fall, I think, of

1841, until the latter part of 1849 or 1850. I succeeded him in the business, and continued to the fore part of 1852, and some time after. I sold the machinery and looms to other parties.

Int. 5. What kind of elastic suspenders did your father make?

Ans. Various kinds. He first started on fine silk goods; that is, some were all silk and some part silk.

Int. 6. What parts were silk?

Ans. Some were all silk and some only silk face. Some were made with filling and warp all silk. He made some with the filling silk and warp cotton. Those with the silk face and cotton back were made on a hand loom. The next looms that were started were what we called the swivel looms.

Int. 7. On what kind of a loom were the all silk made?

Ans. Some of the all silk were made on a Jacquard loom, some on regular swivel looms.

Int. 8. Of the silk face goods, what part was silk?

Ans. The warp was silk and the top filling was silk; the bottom filling was cotton.

Int. 9. When did you make those goods?

Ans. They were made in 1841-2-3, along there.

Int. 10. How many shuttles did you use in making the silk face goods?

1098 Ans. The first loom that I speak of was, I think, for six webs. It was a narrow loom, and there were twelve shuttles in it; that is, there were two shuttles for each web.

Int. 11. Were the shuttle boxes stationary, or did they move up and down—by shuttle boxes I mean the grooves that held the shuttles—did they move up and down in order to have the shuttle opposite the shed, or were they stationary?

Ans. They were stationary; they did not rise or fall.

Int. 12. How were they propelled?

Ans. By a rack and pinion.

Int. 13. Is that an ordinary way of propelling shuttles in weaving narrow fabrics?

Ans. It was with us, although we had a few looms that were propelled differently.

Int. 14. How was it with the rubber cord warps; were they stationary, or did they rise and fall?

Ans. The rubber warp, in the first loom that I speak of, did not rise and fall—that is the hand loom.

Int. 15. Did it pass through a heddle?

Ans. No, sir.

Int. 16. What kept it stationary?

Ans. It was by a frame or bar running across, that had eyes in it.

Int. 17. Did the rubber cords pass through the eyes in the frame or bar?

Ans. Yes, sir.

Int. 18. In making silk face suspender webbing on said loom, did the shuttle, containing the silk filling, pass always on one side of the rubber cords?

Ans. Yes, sir.

Int. 19. How was it with the other shuttle?

Ans. It passed below the rubber; we called it the bottom shuttle.

Int. 20. How many fibrous warp threads were between any two rubber cords?

Ans. Sometimes more, sometimes less, sometimes as little as four.

Int. 21. Were there any fibrous warp threaus in those goods, except those between the rubber cords?

1099 Ans. No, sir; I think not.

Int. 22. Was the filling interwoven with the fibrous warp threads?

Ans. Yes, sir.

Int. 23. What covered the rubber cords at top and bottom?

Ans. The silk filling—a number of silk threads or silk fibres, tram silk, we call it—on the top; the bottom was cotton.

Int. 24. Were the cords covered by anything except filling?

Ans. No, sir.

Int. 25. Are you acquainted with the web used for shoe gorings known as the Union web, with silk filling on one side and cotton on the other?

Ans. No, sir.

Int. 26. How long was said loom used in your father's works in the weaving of elastic suspenders in the manner you have described?

Ans. Some two or three years.

Int. 27. Were the goods sold in the market?

Ans. Yes, sir.

Int. 28. Was the loom kept constantly at work?

Ans. Yes, sir; as far as I can recollect.

Int. 29. Was the loom at any time altered? If yes, when and for what purpose?

Ans. It was altered after it had been running some two or three years, and we then run this kind of goods on it, shoe goring.

Int. 30. Were the goods to which you refer in your last answer as this kind of goods actually woven on said loom?

Ans. Yes, sir; after making the alteration, changing the lathe.

Int. 31. Where have these goods been from that time to this?

Ans. At my house.

Int. 32. How long did you continue to make this kind of goods for shoe goring, on said loom?

Ans. It might have been about a year or a little more.

Int. 33. What became of them?

Ans. We sold them to different parties. We sold some to John Thornly, of Philadelphia, and some to M'r Murray, I think E. Murray,

1100 who was on Third street, below Chestnut, in Philadelphia. I do not know where he is now, whether he is living or not. M'r Thornly is living.

Int. 34. Will you annex to your deposition a sample of each of the kinds of goods here presented to which you have referred as "this kind of goods on it, shoe goring," and which you have said were made on said loom and have since been in your house?

Ans. I will; they are the goods I here produce, marked Defendant's Exhibit 14, J. G., j'r.

Int. 35. At what time were said goods made, contained in said Exhibit 14?

Ans. I think about 1844.

Int. 36. Were they among the first goods made on said loom, or among the later goods made on said loom?

Ans. These were among the first goods after the loom was altered to make these goods.

Int. 37. After the loom had run about about a year, what became of it, and for what purpose was it used?

Ans. It was then changed, or parts of it were used in the building of another loom, a swivel loom, wider. We made a twelve web loom of it.

Int. 38. What kind of goods were made on the twelve web loom?

Ans. Common suspender webbing.

Int. 39. Did your father or yourself ever after make web for shoe gorings?

Ans. No, sir.

Int. 40. Why was that branch of the business abandoned?

Ans. Father found it would not pay coming in competition with these shirred goods that were in the market, pasted goods.

Int. 41. Were there any other goods in the market used for shoe gorings, I mean elastic gorings, besides the shirred goods?

Ans. I saw samples of some.

Int. 42. What were they?

Ans. They were woven goods.

Int. 43. Where were they made?

Ans. I could not say; they were represented to be foreign goods.

(Last part of the answer objected to as hearsay.)

1101 Int. 44. How were they woven as compared with yours?

Ans. They were finer than the samples, Exhibit 14.

Int. 45. What was the fibrous material of them?

Ans. Silk and cotton.

Int. 46. During the time you made shoe-goring web, did you make it of any other material than those of Exhibit 14, J. G., j'r?

Ans. Yes, sir; we made some of silk and some of part silk.

Int. 47. Did you succeed in making better goods than in said exhibit?

Ans. Yes, sir; we made some equal to any that I have ever seen.

Int. 48. Did you cease making them for any other reason than that it was not profitable in the face of the competition with other goods?

Ans. It was because they did not pay, and there was not much demand for those goods in competition with the pasted ones—the corrugated ones.

Int. 49. Have you any samples of the suspender web, made with the standing warp and two shuttles before the loom was altered?

Ans. No, sir.

Int. 50. When did you last have any?

Ans. I have not had any in five years, I think; I think they were lost when I moved the last time to where I am living now.

Int. 51. Are there present any samples of suspender webbing made by you at an early date? If yes, please annex them and state when they were made?

Ans. There are some made by my father. I annex them, marked Defendant's Exhibit 15, J. G., j'r. These were made in about 1844.

(Counsel for complainant objects to the reception of the foregoing deposition on the ground that prior knowledge of deponent and his father are not set up in the answer of the defendants.)

Cross-examination, de bene esse, of the witness adjourned to January 6th, 1870, at 11 a. m.

F. DOEBLEY.

Subscribed and sworn to before me this 5th January, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1102 *Deposition of Henry G. Gurney.*

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Henry G. Gurney; I am 51 years of age; I reside at Newark, N. J. I was formerly a weaver; at present I am engaged in the bakery business. I was a silk manufacturer, not precisely a weaver.

Int. 2. How long were you engaged or connected with the business of silk manufacturing, and where?

Ans. From 1842 to 1867; in Newark and New York.

Int. 3. Did you ever make any elastic goods?

Ans. Yes, sir.

Int. 4. When and where?

Ans. In Newark, between the years 1847 and 1850.

Int. 5. In making elastic web, did you ever use a stationary warp?

Ans. Yes, sir.

Int. 6. When and where?

Ans. In the factory at Newark, at about the time I stated, between 1847 and 1850.

Int. 7. On what kind of a loom?

Ans. On a single hand loom—high case loom.

Int. 8. Was it the rubber warp that was held stationary; and if yes, how?

Ans. Yes, sir; it was a rubber warp. It was held stationary at a certain level in the loom in the harness and passed through the back and fore sleigh.

Int. 9. Was the harness or heddle that held the rubber cords stationary?

Ans. Yes, sir.

Int. 10. Describe how you worked it.

Ans. We had an ordinary harness in the loom, and when the loom was not at work, the cotton or silk or loom warp, whatever it was,
1103 hung below the rubber, and when the loom was in action, part of that warp was raised by the foot by a treddle, and worked alternately up and allowed to sink again to its original position.

Int. 11. Could a shuttle be passed through a shed formed below the stationary rubber warps and through another shed formed above the stationary rubber warps?

Ans. Yes, sir.

Int. 12. Did you so work it in making elastic web?

Ans. Yes, sir.

Int. 13. Did you, during that period of time, while using said loom and stationary warp, use two shuttles, one passing above the rubber cords and the other beneath them?

Ans. Yes, sir.

Int. 14. Did you use different kinds of filling in the two shuttles?

Ans. Yes, sir.

Int. 15. What material did you use for filling?

Ans. Cotton and silk.

Int. 16. Did you make any elastic web, with cotton filling on one side and silk on the other?

Ans. A little of it.

Int. 17. In said goods what covered the rubber cords at top and bottom?

Ans. Silk at the top, cotton at the bottom.

Int. 18. In all the goods made with a standing rubber warp, was there anything over the rubber cords at top and bottom, except the filling?

Ans. There was a cotton warp between the cords, but the silk covered the rubber at the top and the cotton at the bottom. In silk goods it was a silk warp.

Int. 19. Were there any warp threads except between the rubber cords?

Ans. No, sir.

Int. 20. Were the goods made on that loom sold in the market?

Ans. They were sold to Dodd & Wakeman, or M. Dodd & Son, whichever it was at the time.

1104 Int. 21. Did you make any goods with filling of one color on one side and another on the other?

Ans. Yes, sir.

Int. 22. You have said that you worked said loom as you have described, between 1847 and 1850; did you work it during the entire time between those periods?

Ans. No, sir.

Int. 23. Did you work it in 1847?

Ans. To the best of my knowledge we did, in the latter part of 1847.

Int. 24. Did you work it in 1848?

Ans. Yes, sir.

Int. 25. Did you make any other suspender webbing at that time wherein the rubber cords were covered at the top and bottom by the warp threads only?

(Objected to as leading.)

Ans. Yes.

Int. 26. In those goods did the weft thread pass entirely across, first on one side of all the rubber warp, and then across the other side of all the rubber warp, or did it pass over some and under others of the rubber warps?

(Objected to as leading.)

Ans. It passed around, first under and then over.

Int. 27. With what part of the warp were the filling threads interlocked?

Ans. The cotton or silk, whichever it might be.

Int. 28. Did you make any other goods than elastic suspenders with a stationary warp?

Ans. Yes, sir.

Int. 29. What kind of goods?

Ans. Belt ribbons.

Int. 30. What portion of the warp was stationary in the belt ribbon?

Ans. The cotton warp, forming a cord.

Int. 31. Were those cords larger than the balance of the warp?

Ans. Yes, sir.

1105 Int. 32. Were they made in the same or a different way from the elastic supenders?

Ans. In the same way, on the same loom, with more silk threads between the cords. We would take a red warp with white cords and white fillings, and the red warp would be thick enough to cover the white filling, and the cord would show white with the white silk filling over the cotton. It would show alternate red fabric and white cord.

Int. 33. Was there any interwoven fabric except between the cords?

(Objected to as leading.)

Ans. No, sir.

Cross-examination by M'r Blake of counsel for complainant:

Cross-int. 34. Did you work the loom you have described in 1849 and 1850?

Ans. Yes, sir.

Cross-int. 35. How much later?

Ans. Not much later; 1852 or 1853, perhaps.

Cross-int. 36. Where did you work it between 1849 and 1853?

Ans. In Newark; in Bank street, at our own place.

Cross-int. 37. Were you then in business for yourself?

Ans. Yes; in partnership with my brother and father.

Cross-int. 38. What was the weaver's name that worked on that loom?

Ans. I had three weavers.

Cross-int. 39. Give all their names and the dates when they worked there.

Ans. Joseph Hilton, Henry Hilton, and Richard Atkins; part or all of them worked at the times I have specified.

Cross-int. 40. Do you mean to say that these weavers were in your employ during all this time, and that each took his turn at the loom, or that they succeeded each other? If so, in what order?

Ans. I do not mean to say anything of the kind. There was no succession about it; one came after the other; each of them had a separate loom, and each worked his separate loom.

Cross-int. 41. In your direct examination did you intend to describe several looms all alike; and, if so, how many?

1106 Ans. We had half a dozen looms at the time in the factory that were capable of doing that work?

Cross-int. 42. On how many looms did you manufacture elastic goods such as you have described, and in the manner you have described in your direct examination, on which the standing warp was used?

Ans. On three.

Cross-int. 43. Name the weavers who worked on those looms, and state how long each one worked, beginning with the first and ending with the last.

Ans. Joseph Hilton, Richard Atkins, Henry Hilton. Joseph Hilton was the first; he worked about two years or two years and a half, with the exception of going away at one time. Richard Atkins was the next; he worked, to the best of my recollection, between nine months and a year, and Henry Hilton, it may be, six months; perhaps not quite as long. It is only a matter of recollection.

Cross-int. 44. State, if you know, where any of these weavers now are.

Ans. I do not know.

Cross-int. 45. When did you first use a standing rubber warp, and what fabric did you make with it?

Ans. In 1848 or 1849; either the end of 1848 or the beginning of 1849. We made samples of suspender webbing for Bethuel Dodd.

Cross int. 46. How do you fix the date in your mind?

Ans. By my knowledge of the facts and memoranda.

Cross-int. 47. What facts do you know, and what memoranda have you by which you fix 1848 or 1849 as the time when you first used the standing warp?

Ans. I built a loom for M'r Dodd in 1848, which was finished in 1849. I built it for M'r Dodd and myself in conjunction.

Cross-int. 48. Was that a loom on which a standing warp was to be used?

Ans. It was not.

Cross-int. 49. What is the connection in your mind between making a loom on which a standing warp could not be used, for M'r Dodd, and using a standing warp yourself?

1107 Ans. At the time this loom was building we were making a variety of samples of suspender webs for M'r Dodd.

Cross-int. 50. Is this the only fact by which you fix the date?

Ans. No, sir.

Cross-int. 51. State the rest.

Ans. M'r Bagot was working for me at the same time, and at the same time with these men. This was in 1849, to the best of my recollection. It might have been the latter end of 1848. I could tell if I had my old wages books here.

Cross-int. 52. When did M'r Bagot leave you?

Ans. Not very long from that period; he did not work long for me.

Cross-int. 53. Can you swear that he left you before the summer of 1850?

Ans. No, sir; I cannot recollect without reference.

Cross-int. 54. Can you swear that he left you before the end of 1850?

Ans. No, sir.

Cross-int. 55. Can you swear that he left you before the summer of 1851?

Ans. No, sir; I cannot tell without reference. It is my impression that he did long before that.

Cross-int. 56. Have you any other way of fixing the time when you used standing warps, than that it was while M'r Bagot was with you? If so, please state what.

Ans. We used them before he came and after he went in the trim ming business, a portion of the warp stationary.

Cross-int. 57. Who made the looms on which you used the standing warps?

Ans. I do not know.

Cross-int. 58. Where did you get them?

Ans. We bought the frames, I think, in Pine street, New York. I believe the original frames had at one time been at the Sing Sing State prison; but we had a loom builder and carpenter in our own shop always.

Crsss-int. 59. Who was the man in Pine street, and when did you buy the frames?

1108 Ans. I forget who the parties in Pine street were, but they were bought through a broker. In 1845 we bought that lot of machinery. My father bought the machinery; he had a partner by the name of Bird when it was bought. They were ordinary looms. We bought a whole stock of machinery at the time.

Cross-int. 60. Who was the loom-maker you always had in that shop?

Ans. Kilmaster, his name was.

Cross-int. 61. When did he come to you, and when did he leave you?

Ans. He came in 1843 or 1844, and left us in 1846.

Cross-int. 62. Who came after him and in his place?

Ans. William Oldham.

Cross-int. 63. How long did he remain with you?

Ans. He came in 1846 and remained six or seven years.

Cross-int. 64. Where is he now?

Ans. Dead.

Cross-int. 65. Did he fit up your looms to be used with standing warps?

Ans. He did the carpenter work.

Cross-int. 66. Who did the rest of it?

Ans. Any wood-turner we would choose to employ.

Cross-int. 67. Who did the rest of the work?

Ans. Very likely we did it in our own shop with our own lathe.

Cross-int. 68. Who did it in your shop?

Ans. Either the carpenter or the engineer.

Cross-int. 69. What were their names?

Ans. Wilson Combs was the engineer; William Oldham was the carpenter.

Cross-int. 70. Prior to this time, had you been engaged in the manufacture of suspenders?

Ans. No, sir.

Cross-int. 71. What set you to making suspenders?

Ans. Orders from M'r Dodd and representations of the profits we could make out of it.

Cross-int. 72. Did M'r Dodd tell you what sort of suspenders to make.

1109 Ans. He showed samples and ordered goods similar.

Cross-int. 73. Did M'r Dodd at that time make suspenders himself?

Ans. He manufactured suspenders.

Cross-int. 74. Did he tell you how to make them?

Ans. No, sir.

Cross-int. 75. Who suggested to you to use a standing warp to make suspenders?

Ans. Joseph Hilton.

Cross-int. 76. Could not the suspenders which M'r Dodd described to you and desired you to make be made without a standing warp?

Ans. Some could, and others it was more convenient to use a standing warp with.

Cross-int. 77. What became of Joseph Hilton after he left you?

Ans. He went to Philadelphia; I do not know in whose employ.

Cross-int. 78. What were the names of the other weavers in your employ while you used the standing warp?

Ans. William Sisserson, Francis Pritchard; I do not recollect any other men. Parker was braiding, and there were a good many girls in the shop.

Cross-int. 79. Name the weavers who made suspenders for you at that time.

Ans. The three that I named, Joseph Hilton, Henry Hilton, and Richard Atkins, those are all that made those suspenders, except William Sisserson, who worked on a power loom, and a man by the name of McCoy, who afterwards went to M'r Dodd's.

Cross-int. 80. When did they go to Dodd's?

Ans. In 1849, I believe, when M'r Dodd bought the loom. It was a rather unsatisfactory business, and I did not have anything more to do with it.

Cross-int. 81. After they went to M'r Dodd's, did you make any more suspenders?

Ans. No, sir.

Cross-int. 82. Did you sell all your suspenders to M'r Dodd?

Ans. Yes, sir.

1110 Cross-int. 85. How many did you make?

Ans. That is very hard for me to tell.

Cross-int. 84. Did you make 20 gross or 20,000 gross?
Ans. We made over 20 gross and under 20,000 gross.

H. G. GURNEY.

Subscribed and sworn to before me this 5th January, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to January 6, 1870, at 11 a. m.

Deposition of Charles McCoy Bagot.

NEW YORK, *January* 6, 1870—11 a. m.

Present, M'r Dean, of counsel for respondents; M'r Blake, of counsel for complainant, and complainant in person.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Charles McCoy Bagot; I am 56 years of age; I reside in Williamsburgh, N. Y.; I keep a porter house at present.

Int. 2. Have you ever been engaged in the business of weaving? And if yes, please state your experience in it.

Ans. I have been engaged in it from my childhood. I was put on a loom when I was between seven and eight years old; this was in England. I worked in different parts of England, as a weaver, from that time until I came to this country, in the latter part of 1847 or 1848. I have made all kinds of work in weaving, except this kind of rubber work, in England. I have worked mainly in silk goods, ribbons, and narrow woven fabrics. I have worked on three or four different kinds of double shuttle looms.

Int. 3. What has been your experience in weaving in this country?

Ans. When I first came to this country I made some narrow 1111 bindings for M'r McRea, in West Hoboken, in a Jacquard loom. I was there, probably, two months. From there I went either to M'r Gurney's, at Newark, or to George Flack's, or to M'r Purdy's. I cannot say exactly which I went to first. If I went to M'r Gurney's, I made some fringes; if I went to M'r Flack's, I made fringes; if I went to M'r Purdy's, I made some narrow bindings, coat bindings. I rather think it was to M'r Gurney's first, but I would not be positive.

Int. 4. Where did you first see a double-shuttle loom?

Ans. In Coventry, Warwickshire, England.

Int. 5. Describe the different kinds of double-shuttle looms you saw in England.

Ans. The first double-shuttle loom I saw was worked by hand. I worked on that myself from 30 to 35 years ago. The next loom I worked on was a French triple-shuttle loom, which was imported into England —those have one tier above another, and the batten rises and falls—the batten is what the shuttles are placed in. The front of those shuttles are made so that you can take them in and out, and put in what different colors you want to use. This, as near as I can judge, was from 27 to 28 years ago. I saw also a fly double-shuttle loom in England.

Int. 6. Was a standing or stationary warp used on either of those looms?

Ans. I have used both, standing and stationary, on the hand loom, for ribbons, cotton goods and cotton and worsted goods. This I did as early as I worked on any hand loom. A standing shed you can work with one shuttle as easy as you can with two.

Int. 7. For what purpose did you, at that time, use two shuttles?

Ans. One for silk and one for cotton. The silk would go across one side of the standing warps and the cotton over the other, or the mohair, where mohair was used. I have used both.

Int. 8. To what extent or how commonly was a standing warp used in England?

Ans. That depended on how long the same pattern was made. After that order was supplied, we would sometimes find something
1112 else. Any common weaver, almost, would have sense enough to know how to use a standing warp.

Int. 9. Did you see a standing warp used while you were with M'r Gurney?

Ans. I believe, if I recollect right, I did. To the best of my recollection, I did.

Int. 10. In making what kind of goods?

Ans. What I should call for either belts or suspenders.

Int. 11. In making what kind of goods did you use standing warps in England?

Ans. Mostly cotton—sometimes to make ribbed goods. Sometimes the cords or ribs were 1-8 of an inch, sometimes 1-2 inch apart.

(M'r Blake, counsel for complainant, in due season, objects to so much of the testimony of the witness, as relates to what he did or saw done in England.

Counsel for complainant also objects to the reception of the foregoing deposition, on the ground that his prior knowledge is not set up in the answer, and declines to cross examine him, until, if at all, defendant shall have obtained leave to amend the answer in that behalf.)

C. M. BAGOT.

Subscribed and sworn to before me this 6th day of January, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

The witness Doebley is now produced for cross-examination. M'r Blake, counsel for complainant, declines to cross-examine until leave to amend the answer by the insertion of his name shall have been obtained from the court.

Deposition of John P. Wakeman.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John P. Wakeman; I am 51 years of age; I reside at Newark, N. J.; I am not at present engaged in any occupation. I retired from business last spring.

1113 Int. 2. Were you at any time engaged in the making of elastic and other suspender webbing?

(Counsel for complainant objects that this witness is not named in the answer as having any prior knowledge.)

Ans. I have been, yes.

Int. 3. Between what dates, and who was connected with you in business?

Ans. I commenced as early as 1848, I think. M'r Bethuel Dodd was my partner at that time.

Int. 4. Did you know M. W. Dodd, and what was his business?

Ans. I do not remember. I knew M'r Dodd's father, who was doing business before I went into business with his son—his name was Matthias; whether he had any middle name I can't tell.

Int. 5. Is he alive now?

Ans. No, sir.

Int. 6. Is Matthias Dodd living; if not, when did he die, and state whether or not he was, while living, in your factory; and if yes, how frequently, and whether he knew what business you carried on?

Ans. I knew him as I have stated before. He is now dead. He was quite frequently in our place of business, and saw what we were doing, I suppose. I do not know what he was in for; he would call upon us occasionally.

Int. 7. Did you at any time make any business arrangement with William Smith, the complainant?

Ans. We did.

Int. 8. What was it?

Ans. To make shoe goring.

Int. 9. How came you to make said arrangement?

(Objected to, as to form.)

Ans. He stated that he could make this shoe goring, and showed us a good sample.

Int. 10. Describe the sample.

Ans. It was a black web about 4 inches wide, made from vulcanized rubber, I think, covered with black silk.

Int. 11. What was its shape?

Ans. The shape of a V, a goring for a shoe.

1114 Int. 12. Look at defendants' exhibits 7 and 8, J. G., j'r, and state how the sample he showed you compared with said exhibits as to its mode of manufacture, or the way in which it was put together.

Ans. I think it was made like the silk exhibit 7. I should think it was exactly like that piece. It showed the rubber perhaps a little more.

Int. 13. Was the arrangement entered into with M'r Smith in writing; and if yes, can that writing be found?

Ans. I think it was in writing. I do not know whether it can be found. I have no knowledge of it myself—of the writing—the agreement. I think there was one, but I do not know where it is now.

Int. 14. Look at the copy of articles of agreement now shown you, and state whether to your best recollection it contains the provisions of your agreement with M'r Smith.

Ans. Yes, sir, so far as I remember.

Int. 15. In these articles there is a provision that he will guarantee that the goods named by him can be manufactured equal in character and value to those at present imported. To what goods did that provision relate?

Ans. Shoe webbing.

Int. 16. Was there any agreement with M'r Smith as to the amount of money to be furnished to test his ability to produce goods according to his undertaking?

Ans. There was. The amount was to be $250 to try the experiment.

Int. 17. Did he succeed in producing goods equal in quality to the sample shown you or the goods then imported for shoe gorings?

(Objected to on the ground that the contract identified by the witness only requires that the goods to be produced by Smith should be equal to the goods at that time imported.)

Ans. No, sir.

Int. 18. Did he make goods woven after the manner of the sample

shown you by him, or after the manner of exhibit 7, J. G., j'r, which you have seen; and if yes, what became of those goods?

Ans. Yes; some of them were sold; some were so imperfect that there was no sale for them.

1115 Int. 19. From an examination of your books, can you state what sales were made of shoe-webbing made by M'r Smith under his agreement with you? If yes, please do so.

Ans. The first bill, I think, we sold in March, 1850, to John Thornley—$53.25. I have here copies of the sales that we made after M'r Dodd and I dissolved. M'r Dodd has them up to that time, and I can pick out from these I have here the webs that we sold that were made by M'r Smith.

(So much of the foregoing answer as relates to the copies of sales made after M'r Dodd and the witness dissolved objected to as incompetent.)

Int. 20. State them.

(Same objection.)

Ans. August 29, 1850. I did not make these copies. I had them made.

(Objected to by M'r Blake.)

Int. 21. When did M'r Smith cease to be connected with your establishment?

Ans. Some time in 1850.

Int. 22. Were sales of shoe-webbing made by him made while he was with you?

Ans. I think there were.

Int. 23. In small or large quantities?

Ans. In small quantities.

Int. 24. Did M'r Smith make any sales himself?

Ans. I think he did.

Int. 25. Did M'r Smith do anything towards the introduction into the market of the shoe webbing made by him?

Ans. He did. He showed it—took it for that purpose. I heard of his showing it at several places.

(Last part of the answer objected to as hearsay.)

He showed it to M'r Brewster, who brought a sample of it to me and asked me if M'r Smith made it.

Int. 26. Did you know of his having portions or pieces of webbing made by him in your factory in his possession for the purpose of sale or exhibition?

1116 (Form of question objected to.)

Ans. Yes, sir.

Int. 27. Do you remember of his having such pieces of webbing in his possession with the consent of your firm; and, if yes, what was he to do with them?

Ans. He had pieces. He had them for the purpose of endeavoring to make sales, and for the purpose of getting a customer for our interest in the business.

Int. 28. Did he report to your firm any orders for webbing which your firm filled?

Ans. I think he did—small orders.

Int. 29. What was the motive power of your factory?

Ans. Steam.

Int. 30. How was it as to steadiness and regularity?

Ans. As far as I recollect it was very good. We had a great deal

of machinery running by it. There were no complaints, to my recollection.

Int. 31. What books has the messenger sent for the books of Dodd & Wakeman brought, and which are here at present?

Ans. The ledger and day book of Dodd & Wakeman.

Int. 32. What sales do you find by those books were made during 1850 of web for shoe-gores that were made by M'r Smith?

(Objected to on the ground that it does not appear that they are books of original entry, by whom the entries were made, or whether the witness knows whether the entries made therein are true or not.)

Ans. This day-book is a book of original entry, in which the goods sold were entered in. Some of the entries made there I recognize as sales made by me. I recognize in these sales web made by M'r Smith. I recognize them by the colors. Sometimes, maybe, M'r Smith made the sale; sometimes I did; sometimes M'r Dodd did.

I find on the day-book, August 29, 1850, a sale made to William L. Whiting—2 yards of 3 1-4 inch silk web, at $1.00 per yard; 9 3-4 yards of 4-inch mohair web, at $1.00 per yard; 8 1-4 yards of silk and cotton. November 12, 1850, 3 1-2 yards of cotton. November 5, 1850, a sale to William E. Dikeman, 24 1-2 yards, at 75 cents per yard. July 5, 1117 1850, to Daniel Hodgman, 5 yards of cotton, narrow; 5 yards of silk, narrow. November 8, 1850, 29 yards of narrow cotton, 10 1-2 yards of narrow worsted, 5 yards of silk, narrow, to Daniel Hodgman. September 17, 1850, 11 1-2 yards of narrow cotton, at 35 cents.

There are several other entries which, from their width, I should think were M'r Smith's goods; but I am not positive about it, and I do not, therefore, give them.

(Counsel for complainant object to the entries recited in the foregoing answer that it does not appear that the witness made them, or that he knows who made them, or that they were made contemporaneously with the sales.)

Int. 33. Is Dodd & Wakeman's cash-book present?

Ans. I have not seen it; it is not among these.

Cross-examination by M'r Blake:

Cross-int. 34. While you were testifying in chief, did you hold in your hand a paper, and refer to it from time to time? If yea, will you produce it and annex it to your deposition?

Ans. I had; I produce it to be annexed.

(It is annexed, marked Exhibit XXX, J. G., j'r.)

Cross-int. 35. By whom was it prepared and given to you?

Ans. By M'r George Dodd.

Cross-int. 36. Who and what is M'r George Dodd?

Ans. He assisted in keeping our books at that time. I think he is now in the suspender business. I do not know with whom—either with Judson & Sawyer or the Nashawannuck Company. His place of business is in Chambers street.

Cross-int. 37. Could you have testified to the facts stated in your direct examination without this memorandum?

Ans. I think I could.

Cross int. 38. Could you have testified to all of them?

Ans. I think I could.

Cross-int. 39. How came M'r Dodd to prepare and hand you this memorandum?

Ans. Because I had not time to look over the books myself.

Cross-int. 40. What books?

1118 Ans. The books of Dodd & Wakeman.

Cross-int. 41. What did you want to look over the books of Dodd & Wakeman for?

Ans. To inform myself and refresh my memory.

Cross-int. 42. What was your department in the business of Dodd & Wakeman when M'r Smith was with you?

Ans. I attended to all parts of the business, more or less.

Cross-int. 43. Is your knowledge of the sales of the goods made by M'r Smith, to which you have testified, derived from your examination within an hour of the books concerning which you have testified?

Ans. No, sir.

Cross-int. 44. From what source is that knowledge derived?

Ans. From my recollections of the business and memoranda of my own which I had.

Cross-int. 45. Please produce the memoranda to which you refer in your last answer.

Ans. I have not got them here.

Cross-int. 46. When, from what source, and for what purpose were these memoranda made?

Ans. It was made about the time or soon after the breaking up of the concern, at the time M'r Smith brought his suit; that is, in regard to my recollections of the web, &c., for the purpose of having a knowledge. I made it from the facts I knew at that time, when everything was fresh in my mind, for the purpose of being able to testify understandingly in the suit.

Cross-int. 47. Cannot you state the year in which it was made?

Ans. I think it was in 1850; it might have been later.

Cross-int. 48. When was the suit for which it was made?

Ans. I think the suit was brought about that time.

Cross-int. 49. Were you a party to that suit?

Ans. Yes.

Cross-int. 50. When did you last see that memorandum?

Ans. I think I saw it to day or last evening.

Cross-int. 51. Without that memorandum, and without the memorandum XXX, could you have testified to any of the sales to which you have testified in your direct examination?

1119 Ans. Yes, sir; I think I could.

Cross-int. 52. Please name the sales to which you could have testified without that memorandum and without the memorandum XXX.

Ans. W. L. Whiting, not the day and date; William E. Dikeman, Hodgman, Blauvelt; I do not remember all the names.

Cross-int. 53. What did you sell to these different parties?

Ans. Webs.

Cross-int. 54. What webs did you sell to each of these parties?

Ans. I cannot recollect as to the items. I can only recollect that by going to the books as I did to-day. I can recollect the names as being parties to whom I sold goods.

Cross-int. 55. Did you sell webs to these gentlemen before or after M'r Smith left you?

Ans. I think some before and some after; not a great many before.

Cross-int. 56. Can you state which before and which after?

Ans. I cannot without referring to the books.

Cross int. 57. Did you form with M'r Smith the partnership contemplated by the agreement?

Ans. I did not.

Cross-int. 58. Why not?

Ans. Because he could not perform his part of it.

Cross-int. 59. In what respect?

Ans. Because he did not produce the goods according to agreement.

Cross-int. 60. In what respect not according to the agreement?

Ans. I do not remember distinctly; because the goods were not saleable and according to sample; they were imperfect.

Cross-int. 61. Did you know of a pair of coon pulleys being ordered or asked for by M'r Smith?

Ans. I do not remember a great deal about that; there seems to me there was something of that sort. I do not recollect how they looked or what they were.

Cross-int. 62. Were they not procured from Pecare & Smith?

Ans. I do not know, sir.

Cross-int. 63. At whose request did you come here to testify?

1120 Ans. George Dodd's.

Cross-int. 64. The same one who furnished you the memorandum?

Ans. The same person.

Cross-int. 65. Did he furnish you the memorandum at the time he asked you to come and testify?

Ans. No.

Cross-int. 66. When he asked you to come and testify did he say that he would give you a memorandum?

Ans. No.

Cross-int. 67. Did he volunteer the memorandum or did you ask him for it?

Ans. I asked him for it.

Cross-int. 68. What did you ask him for it for?

Ans. To get at the matter in dispute, and to save myself trouble in overhauling the books.

Direct examination resumed:

Int. 69. Has the cash-book of Dodd & Wakeman been brought here since the close of your direct examination, and is it now before you?

(Objected to as not being in rebuttal.)

Ans. Yes, sir; that is our cash-book.

Int. 70. What entries of sales for cash of shoe-webbing made by M'r Smith do you find on that book?

(Objected to as before, and it not appearing that the witness kept the cash-book—who kept it—that the person who kept it is dead, or that the entries made therein are contemporaneous with the sales. Question withdrawn.)

Cross-examination resumed:

Cross-int. 71. Will you be good enough to look at the cash-book before you and state whether you find in it any entry in your own handwriting, or in the handwriting of any person now dead, that you recognize, about any cone pulleys.

Ans. I decline to look through the cash-book.

JOHN P. WAKEMAN.

Subscribed and sworn to before me this 6th day of January, 1870.

JOSEPH GUTMAN, J'R,

Examiner, &c.

1121 (Counsel for complainant requests the defendant to produce the witness, Thomas Creighton, for further cross-examination.)

Counsel for defendants says that the testimony of the witness having been closed, and the witness having been grossly insulted by the complainant while giving his testimony, he does not think he is required to reproduce him.

NEW YORK, *March* 2, 1870—11 a. m.

Present, M'r Dean, of counsel for respondents; M'r Keller, of counsel for complainant; and M'r Smith, complainant, in person.

Examination adjourned to March 3, 1870, at 11 a. m.

Deposition of John P. Wakeman, recalled.

NEW YORK, *March* 3, 1870—11 a. m.

Present, M'r Dean, of counsel for respondents; M'r Keller, of counsel for complainant; and M'r Smith, the complainant, in person.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. Have you been examined before as a witness in this case?

Ans. I have.

Int. 2. Prior to the making of the agreement with M'r Smith, to which your attention was called on your previous examination, did you receive from M'r Smith a proposed agreement? If yes, in whose handwriting was it?

Ans. Yes; in the handwriting of M'r Smith, I believe. I produce the agreement.

(Agreement produced is marked Exhibit 1.)

Int. 3. In this exhibit, in article 1st, it speaks of elastic web-
1122 bing for boots, suspenders, and other purposes; did the agreement made by you relate to webbing for all of said purposes? If not, state what the agreement between you and said Smith contemplated.

Ans. It contemplated principally the making of shoe-web.

Int. 4. Do you remember that it contemplated the making of anything else?

Ans. No.

Int. 5. Was any sample of webbing exhibited to you by said Smith; and, if yes, what was it?

Ans. It was like the sample marked Exhibit 7, J., G., j'r.

Int. 6. Did he show you, or was there present at the making of said agreement, or at any time previous thereto, any sample of suspender-webbing?

Ans. I do not recollect of any.

Int. 7. What was the size and shape of the sample aforesaid shown you by M'r Smith, and was said sample shown you prior to the making of the agreement with M'r Smith?

Ans.

Int. 8. What became of said sample?

Ans. I do not know. We kept it for some time.

(Objected to as leading, by M'r Smith.)

Int. 9. About how long was it kept?

Ans. I think we had it five or six years afterwards. We had occasion to refer to it on account of a suit brought by M'r Smith against us for damages for not fulfilling the contract made by us.

Int. 10. Prior to making said agreement between you (by you I mean

the firm of Dodd & Wakeman), did M'r Smith say anything, and if yes, what, regarding said sample?

Ans. He did say something; that he could make such goods. He represented that he was familiar with the making of such goods, and could do it with a very small outlay.

Int. 11. Within what time and at what outlay?

Ans. I think the time was about six weeks, and the outlay $250. He represented that he had the looms, and with very little alteration he would be able to make these goods, provided we furnished him the room and power, which we agreed to do.

1123 Int. 12. Did he say anything, and, if so, what, about importations of elastic shoe web?

(Objected to by M'r Smith as leading and highly improper.)

Ans. There was something said about imported web. It was generally understood that this was imported web, and that we could make it here at a profit of at least 25 per cent.

Int. 13. Did M'r Smith say anything on that subject; if yes, what?

(Objected to, as the witness has already stated the conversation.)

Ans. I don't know what he said. It was something relative to imported web. I knew that kind of web was imported. I had frequently seen it, and we wanted to make it here. We went into it on M'r Smith's representations of how we could make it, and the profit of 25 per cent. there would be in our making it.

Int. 14. What became of the webbing made by M'r Smith while working under said agreement?

Ans. Part of it was sold. I don't know what became of the balance.

Int. 15. Was any portion of it in any manner preserved; and if yes, how, and is any of it here present?

Ans. There was some preserved. I found some nailed upon a desk stool. I cut it off this morning, and now produce a piece of it.

(Marked Exhibit Wakeman 2, 3, 4.)

Int. 16. Was webbing like said several exhibits sold by you while Smith was working for you under his agreement?

Ans. Yes, in small quantities.

Int. 17. Prior to the making of said agreement with the said Smith where was your time spent; in New York or Newark; and where, about that time, was your partner's, M'r Dodd?

Ans. Prior to that I was in New York for 8 or 10 years. About that time I was spending my time at Newark. My partner divided his time between Newark and New York. He sold most of the goods; I don't mean most of the web, but most of the goods we were dealing in. He sold some of the web.

Int. 18. After the termination of your connection with M'r Smith, did you continue to make elastic webbing for shoes? If yes, how long, and have you a sample of the webbing made by you?

1124 Ans. We continued to manufacture the web for a few months. I produce a sample. Sample was made on the looms after we sold them.

(Sample marked Exhibit Wakeman 5.)

Int. 19. Was said last-named sample woven in the same way with one of the kinds woven by M'r Smith?

Ans. The same way.

Int. 20. Look at Exhibit Wakeman 3, and state whether any portion of the material of which it is composed is gone, from what part of it, and the cause of it?

Ans. The rubber is broken, rotten. When it was made it was elas-

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Ans. I have.

Int. 2. Prior to the making of the agreement with M'r Smith, to which your attention was called on your previous examination, did you receive from M'r Smith a proposed agreement? If yes, in whose handwriting was it?

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Ans. I do not know. We kept it for some time.

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the firm of Dodd & Wakeman), did M'r Smith say anything, and if yes, what, regarding said sample?

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Int. 11. Within what time and at what outlay?

Ans. I think the time was about six weeks, and the outlay $250. He represented that he had the looms, and with very little alteration he would be able to make these goods, provided we furnished him the room and power, which we agreed to do.

1123 Int. 12. Did he say anything, and, if so, what, about importations of elastic shoe web?

(Objected to by M'r Smith as leading and highly improper.)

Ans. There was something said about imported web. It was generally understood that this was imported web, and that we could make it here at a profit of at least 25 per cent.

Int. 13. Did M'r Smith say anything on that subject; if yes, what?

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Ans. There was some preserved. I found some nailed upon a desk stool. I cut it off this morning, and now produce a piece of it.

(Marked Exhibit Wakeman 2, 3, 4.)

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Ans. Prior to that I was in New York for 8 or 10 years. About that time I was spending my time at Newark. My partner divided his time between Newark and New York. He sold most of the goods; I don't mean most of the web, but most of the goods we were dealing in. He sold some of the web.

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(Sample marked Exhibit Wakeman 5.)

Int. 19. Was said last-named sample woven in the same way with one of the kinds woven by M'r Smith?

Ans. The same way.

Int. 20. Look at Exhibit Wakeman 3, and state whether any portion of the material of which it is composed is gone, from what part of it, and the cause of it?

Ans. The rubber is broken, rotten. When it was made it was elas-

ic. This is a piece of M'r Smith's web which he made while he was with us.

Int. 21. Was the rubber which is broken and mostly gone from the fabric a part of the warp or weft?

Ans. It was part of the warp.

Int. 22. Did M'r Henry G. Gurney make for your firm any suspenders in which the face differed from the back? If yes, describe them.

Ans. He made some web for us, but no suspenders. He made suspender webbing for us with cotton, rubber, and silk. Most of the silk was thrown on the face of the web.

Int. 23. What was the warp composed of?

Ans. I think it was composed of rubber, cotton, and I think there was some silk. I am not sure about the silk, whether it was in the warp or filling. This Henry G. Gurney was one of the firm of Gurney & Co., consisting of his father, his brother, and himself.

Int. 24. When did the Gurneys make said webbing for you?

Ans. I think it was in 1849; in the spring of 1849.

Int. 25. Please state how you came to find said samples, Exhibit Wakeman 2, 3, and 4?

Ans. When I was here before, I was requested to get, if possible, samples of the web that M'r Smith made, and asked Frank Abbott, who had been clerk with me, to find some of those old webs which had been around the store so long. He found this old stool in the garret, where it had been put when we moved from Warren street, where we had some of this old web stowed away.

1125 Int. 26. When did you move from Warren street?

Ans. Either three or four years ago from about this time.

Int. 27. How do you identify the web as web made while M'r Smith was with you?

Ans. One reason I do is because I never saw any other made like this particular style—the way Smith made it. What I saw after and before were better goods. What I saw were imported goods of fine silk or fine cotton. This is made from common cotton—common material—for the purpose of making a cheap article, and the width was narrower than we made afterwards. I saw so much of it, and handled so much of it, during the trial we had with Smith, that we all became familiar with it.

Int. 28. There are three Exhibits, 2, 3, and 4. Does your last answer relate to all of them?

Ans. My previous reply has reference to No. 3.

Int. 29. How is it with regard to No. 2? Was webbing like that made while M'r Smith was with you?

Ans. Yes.

Int. 30. How is it with regard to No. 4?

Ans. No. 4, I think, was made after M'r Smith left, in the same loom, but the loom had been changed. We had been making a web with a white back while M'r Smith was with us, and the edges were uneven, and we could not make an edge just as we wanted. We got a man by the name of Sebastian Oberer to change the loom so we could make a different edge, and I believe No. 4 is a piece of web made after that change.

Int. 31. How with regard to Exhibit Wakeman No. 5? When was that made?

Ans. That was made some time afterwards. I think two years afterwards, on looms that I had sold. I bought several hundred yards of it. I found this small piece, No. 2, in my desk this morning, along with a

lot of other samples, and the No. 5 Frank Abbott had found and laid aside for me. He found it in the old desk.

J. P. WAKEMAN.

Subscribed and sworn to before me this 3d day of March, 1870.
JOSEPH GUTMAN, J'R,
Examiner, &c.

1126 Cross-examination by M'r Keller, of counsel for complainant:

Cross-int. 32. Is there any one of the exhibits which you have produced here which was found by yourself?

Ans. Yes.

Cross-int. 33. Which one?

Ans. No. 2.

Cross int. 34. Is that the only one?

Ans. That is the only one I picked out of the desk myself. I was up helping to look for the stool. He found it while I was there, and I cut the pieces from it which I brought here.

Cross-int. 35. Who has had possession of these several exhibits from the time they were made till you produced them here?

Ans. I have.

Cross-int. 36. State specifically in what way they have been in your possession from the time they were made.

Ans. They came from the loom to my possession and then I had them for sale. When I could sell them no longer they were stowed away.

Cross-int. 37. By whom were they stowed away?

Ans. I had them sent to the upper loft, and as I moved around I had them taken along with me until I moved from Warren street. There we threw them into the street. Some of them had been burned up, previously to that, in kindling fires. No. 5 and No. 2, I think, were in the old desk. No. 2 I found in the old desk myself, and the stool went around with us to Broadway. I took a half dozen pieces of the old web with me to Newark, thinking I might use it. I do not know what has become of it.

Cross-int. 38. Who nailed the webbing on the stool produced here?

Ans. I do not know.

Cross-int. 39. Were you present when it was nailed on the stool?

Ans. I do not remember.

Cross-int. 40. As to Exhibits 2 and 5, which you say you found in the desk, do you know who put them in the desk, and when?

Ans. I do not.

1127 Cross int. 41. Was Exhibit 5 made by M'r Smith, or under his direction, when he was with you?

Ans. I think not.

Cross-int. 42. How long after Smith left was Exhibit 5 made?

Ans. I think it was two or three years.

Cross-int. 43. Who made it?

Ans. The Nashawannuck Suspender Company.

Cross-int. 44. Did you see them make it?

Ans. I saw them make web like it. I could not say it was this piece.

Cross-int. 45. Describe the various kinds of thread or cotton which were used by M'r Smith in making elastic web while he was with you.

Ans. We had, I think, to begin with, No. 40 cotton. I have almost forgotten the numbers. I think it was white cotton and we had it dyed black. Then we got some rubber and had it cut into threads, and we made web like Exhibit No. 3. Then we got some silk; I think a drab

silk. We wove that with some threads of cotton and some of rubber for warp, and filled with this silk, covered both the rubber and cotton with this silk and made a 3½-inch web of it. We had some difficulty with the vulcanized rubber, and wove raw rubber and cotton threads for warp, and filled with this silk. Either before or after we made some from worsted, using the rubber and cotton for warp and filling with worsted. Afterwards we made some with black silk for face, and white or black cotton for the back. We did not make much of this. I think this was about the last experiment M'r Smith made.

Cross-int. 46. Do you not know that during the time M'r Smith was with your firm that you never had any cotton finer than No. 30's?

Ans. I do not remember. I think we used 40's.

Cross-int. 47. Do you not know that the cotton which you had was so coarse that M'r Smith had to go to Paterson to have some made as fine as No. 30?

Ans. I do not remember about that. We may have worked 20's or 30's or 40's. I still think it was 40's.

Cross-int. 48. Are the weft threads of the web, Exhibit 3, twofold?

Ans. I don't know whether you mean doubled and twisted, or
1128 what. If you mean doubled and twisted by twofold, then it was twofold, I think.

Cross int. 49. Was not all the cotton which was used in making such web while M'r Smith was with you twofold cotton—that is to say, doubled and twisted?

Ans. I could not say.

Cross-int. 50. Could you, by reference to your books, tell the degree of fineness of the cotton that was used while M'r Smith was with you?

Ans. I don't know.

Cross-int. 51. Did you at any time have any finer than 40's?

Ans. I don't know.

Cross-int. 52. Will you specify each and every kind of goods—elastic fabrics, which were named in your conversations with M'r Smith, prior to the agreement, and which were named at that time as having been imported?

Ans. The conversation was principally upon the sample of shoe-web he showed us. I do not remember that he spoke of any other web at that time.

Cross-int. 53. In whose possession had you seen any imported elastic webs, such as you say M'r Smith exhibited to you prior to the time of your first interview with M'r Smith?

Ans. I think I saw them first at either Edwin Brooks' or Lorin Brooks' boot and shoe store, in Fulton street.

Cross-int. 54. In the last question I asked you for your knowledge, not for what you think.

Ans. That is as near as I can come to it. I think I saw them in both places.

Cross-int. 55. Did you see them anywhere else than those two places?

Ans. About that time, either before or after, a man by the name of Blauvelt, at Newark, showed us some he was putting in shoes, and a man by the name of Wheeler also showed us some.

Cross-int. 56. Do you know where the persons named in the last answer are to be found?

Ans. I suppose, in Newark, if they are living.

1129 Cross-int 57. What is the given name of the two persons named Blauvelt and Wheeler?

Ans. I do not know, sir.

Cross-int. 58. What business were they engaged in?

Ans. Shoe manufacturers.

Cross-int. 59. Did Smith use any imported cotton while he was with you?

Ans. He did.

Cross-int. 60. Through whom was it imported?

Ans. Through R. A. & G. H. Witthaus.

Cross-int. 61. When did it arrive?

Ans. I don't know. We got it from them, I think.

Cross-int. 62. How do you know M'r Smith used that cotton which you imported?

Ans. He used what we furnished him. Do not know of his using any other.

Cross-int. 63. How long was he with you?

Ans. I think about six months.

Cross-int. 64. How soon after you entered into the agreement was it before he commenced working making webs?

Ans. About a month before he got started.

Cross-int. 65. What was the duty on elastic goods which you say were imported from Europe at that time?

Ans. I don't remember.

Cross-int. 66. How could you calculate a profit at which such goods could be made unless you knew what duty was paid on the imported articles?

Ans. I probably did know at the time.

Cross int. 67. Look at Exhibit 2 and state whether you can swear that you have imported cotton as fine as that at the time M'r Smith was with you.

Ans. I don't know. We did not import much cotton; we depended more on buying here.

Cross-int. 68. Can you name any person from whom at that time you purchased cotton as fine as that in Exhibit 2?

Ans. I don't think I can.

1130 Cross-int. 69. Will your books show?

Ans. I don't know. I don't think they would show the numbers. The bills would probably show.

Cross int. 70. Will you produce the bills?

Ans. I haven't them. Don't know where they are.

Cross-int. 71. Was there any single cotton in your establishment which was used by M'r Smith while he was with you, in making elastic web?

Ans. I don't know whether he used single cotton or double.

Cross-int. 72. After Gurney made suspender webbing for you did you manufacture suspender webbing?

Ans. We did.

Cross int. 73. Was it the same kind as Gurney had previously made for you?

Ans. I don't remember now whether we made the same kind or not.

Cross-int. 74. Where, and from whom, did you obtain the looms on which you made such suspender webbing?

Ans. I don't remember.

Cross-int. 75. Look at Exhibit 1 and state whether the pencil-marks were on it when you say M'r Smith submitted the paper to you.

Ans. The pencil-marks on the first page, I think, are in the hand-

writing of Mr. Dodd. Those on the third page, I think, are in the handwriting of M'r Smith, as well as those on the fourth page.

J. P. WAKEMAN.

Subscribed and sworn to before me this 3d day of March, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of Bethuel Dodd, recalled.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. Have you been examined before as a witness in this matter?

Ans. Yes.

1131 Int. 2. Do you remember any purchases made by Mess'rs M. Dodd & Son of a loom or looms from Henry G. Gurney, and have you any receipts on account thereof? If yes, state what you remember and produce said receipts.

Ans. I recollect that M'r Gurney made a loom for us in the early part of 1848. I have here three receipts showing amount paid on account. The receipts bear date February 19, March 2, and April 12, 1848.

(Receipts marked Exhibit Dodd 1.)

Int. 3. At about the time of the purchase of said loom, did M'r Gurney make any suspender webbing for you?

Ans. He did.

Int. 4. Of what kinds?

Ans. Suspender webbing from a French sample I gave him, with a satin face and a plain back.

Int. 5. Look at Complainant's Exhibit B B, K. G. W., and state whether or not you recognize the agreement therein contained as the agreement between you and M'r Smith.

Ans. I think it is, although to-day is the first time I have seen it in 20 years.

Int. 6. Look at Exhibit Wakeman 1, and state whether you have any remembrance of that; and if yes, what?

Ans. I have no recollection of ever seeing that before yesterday.

Int. 7. Before the making of the agreement between M'r Smith and Dodd & Wakeman, was there any conversation with M'r Smith about imported elastic webbing?

Ans. Yes, sir.

Int. 8. What kind of elastic webbing?

Ans. For shoe goring.

Int. 9. In making the contract between Dodd & Wakeman and M'r Smith, what kind of webbing was it intended to make?

Ans. Elastic shoe web for goring.

Int. 10. Anything else?

Ans. Other things were spoken of, but not until after our attention was called to this express article. I mean shoe goring.

Int. 11. Was there any agreement or understanding with M'r Smith that he should make anything else but that shoe goring?

1132 Ans. M'r Smith first applied to me with a sample of elastic web in the form of a V, and represented that he could make it like the sample, but talked of nothing except web for shoe goring, although there seems to be entered in Exhibit Wakeman 1 some other articles besides shoe-goring.

Int. 12. Look at Exhibits Wakeman 2, 3, 4, and state whether you

recognize them as similar to those made by M'r Smith while he was with you.

(Objected to as leading.)

Ans. Exhibits 2 and 3 are, I think, made by him.

Int. 13. Look at Exhibits Wakeman 2, 3, and 4, and state when and where you first saw them, or goods similar to them.

Ans. They were made in Newark, I think, in the early part of 1850.

Int. 14. By whom do you think Exhibits Wakeman 2 and 3 were made?

Ans. They were made in Newark in 1850 under M'r Smith, I think.

Int. 15. Were goods of such kind sold while M'r Smith was with you?

Ans. In addition to others, they were.

Cross-examination of M'r Keller, of counsel for complainant:

Cross-int. 16. Have Exhibits 2, 3, and 4 been in your possession since they were first made?

Ans. No, sir.

Cross-int. 17. Do you know of your own knowledge in whose possession they have been since they were made?

A. I do not.

Cross-int. 18. How, then, can you swear that they were made in Newark, under the direction of M'r Smith?

Ans. To the best of my belief and knowledge, I sold the goods at that time.

Cross int. 19. Do you mean in your last answer the Exhibits 2, 3, and 4?

1133 Ans. I mean 2, 3, and others.

Cross-int. 20. To whom did you sell them?

Ans. I shall be obliged to refer to the books of Dodd & Wakeman to get the names. I recollect John Thornley & Co., of Philadelphia. Dodd & Wakeman's books will give the quantity, dates, &c.

Cross-int. 21. Did you sell any webbing similar to Exhibits 2 and 3 to Thornley?

Ans. I think not. Dodd & Wakeman's books will tell.

Cross-int. 22. With what kind of tools were the India rubber threads cut for the purpose of weaving elastic web in Dodd & Wakeman's establishment when M'r Smith was there?

Ans. I have no recollection at present.

Cross-int. 23. Did you not have a man at that time working in a secret room cutting rubber into thread with circular knives?

Ans. It is possible; I have no recollection now.

Cross-int. 24. Look at Exhibit 2, and state if you are willing to swear that at the time Smith was with Dodd & Wakeman you had India-rubber threads as fine as are in that exhibit?

Ans. I have no recollection of it at present.

Direct examination resumed:

Int. 25. What became of the piece of webbing like a figure V shown you by M'r Smith before your contract with him?

Ans. I think I had it in my possession for several years among other samples. It has been finally lost—thrown away.

B. DODD.

Subscribed and sworn to before me this 3d day of March, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to March 4th, 1870, at 11 a. m.

1134 NEW YORK, *March 4th*, 1870—11 a. m.

Present, counsel as before.

Mr. Dean, of counsel for defendants, gives notice that he will refer, on the hearing of this case, to letters patent granted by the government of France to Bonean pour un metier à tisser les bretelles, dated December 21st, 1847, and described in Brevet d'invention, 2d series, vol. 12, pages 265 and 266, and the drawings referred to therein; also, in letters patent granted by the government of France to Sieure Rattier et Gubal pour un tricot elastique, dated November 26, 1845, and in Brevet d'invention, 2d series, vol. 5, page 220.

Deposition of Julius Hotchkiss, recalled.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. Have you been before examined as a witness in this suit?

Ans. I have.

Int. 2. Have you to-day examined a certified copy from the Patent Office of the application of Julius Hotchkiss, filed August 23d, 1844, and a piece of fabric certified by the Commissioner to be a piece of the original specimen in the matter of the application of Julius Hotchkiss, supposed to have been filed August 23d, 1844, for a fabric or elastic cloth web; and do you recognize said application and piece of fabric as having been sent by you to the Patent Office?

Ans. I have examined them both, and recognize them as being papers that were made under my direction. I perceive, however, that from my former testimony these have an earlier date than I had then supposed. I recognize the fabric as being the one which I produced at that time.

Int. 3. What was the difference, if any, between said piece of fabric, for which you sought to obtain a patent by said application, and elastic fabrics before that time made and sold by you?

Ans. It consisted of uniting together in one body several strands
1135 of rubber which before had been equally distributed over the whole width.

Int. 4. Does said application correctly describe the differences between the elastic webbing before that time made and sold by you and the web you then sought to patent?

Ans. It does.

Int. 5. Did you make any quantity, and if yes what quantity, of fabric like that certified as aforesaid, at about the time of said application?

Ans. At that time they were very popular, and I should judge one-third of our machinery was at work on those goods.

Int. 6. So far as the way and manner in which the rubber cords were covered in the webbing, before that time made by you, wherein the rubber cords were equally distributed throughout the fabric, how did they compare with said certified piece of fabric?

Ans. It was the same as all that class of goods which were subsequently known as No. 48.

Cross examination of this witness waived.

JULIUS HOTCHKISS.

Subscribed and sworn to before me this 4th day of March, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Deposition of Amos D. Wyckoff.

Direct examination by Mr. Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Amos D. Wyckoff; I am 53 years of age; I reside at Harlem, N. Y.; I deal in manufacturers' goods in New York City, and have dealt in such goods since 1865, with M'r Shattuck.

Int. 2. When was your attention first attracted, if at all, to the 1136 **use of woven elastic webbing for shoe gores in which the elastic property was India rubber?**

(Objected to, as the name of the witness is not given in the answer as a person having prior knowledge of the claim for invention described in the plaintiff's patent.)

Ans. Along in the spring of 1849.

Int. 3. Was there anything which caused you to take notice of the fact? If yea, state fully what it is.

(Same objection.)

Ans. I was a clerk for the owner of a patent for the use of India rubber gore for boots and shoes. I took notice of it because it was the interest of my employer that there should be no infringement on his rights.

Int. 4. Who was your employer at that time, and where was his place of business?

(Same objection.)

Ans. Horace H. Day, at 23 Courtlandt street, New York.

Int. 5. How do you fix the time when your attention was attracted to such use of woven elastic web?

(Same objection.)

Ans. Because it was about the time I commenced again to be active in business after having been absent in the British, Dutch, and Spanish East Indies. Among the first things that came to my attention was the infringement of M'r Day's rights through the means or agency of woven gusseting. M'r Day did not weave his goods. They were shirred otherwise.

Int. 6. When did you go to the Indies and when did you return?

Ans. I went in the latter part of the year of 1847, and I returned in October, 1848.

Int. 7. What use did you then observe to be made of woven elastic gusseting for shoe gores?

(Same objection.)

Ans. They were shown to me on various occasions in shoes and gaiters that were said to have been brought from Europe. They were not offered for sale. They were often on people's feet. They may have taken them off to show me.

Int. 8. Are there any similar pieces of web present, I mean 1137 **pieces of gusset webbing, to which your attention was first attracted?**

(The witness is shown a number of samples. Same objection, and further objected to on the ground that the question is leading.)

Ans. My recollection is that the appearance of any of these samples would represent what I have referred to.

(The witness selects samples which have been before used in this suit, and which are marked Exhibit Wakeman 5, Exhibit 8, J. G., jr., Exhibit 7, J. G., jr., Exhibit 3, J. G., jr., Exhibit 9, J. G., jr., Exhibit 11, J. G., jr.)

Int. 9. From how many samples have you made the above selections?

(Same objection.)

Ans. From 19.

Int. 10. How do the woven gussetings, used for shoe gores at the present time, compare in quality and appearance with those to which your attention were first attracted, as you have said?

(Same objection.)

Ans. I could not answer that. It is a great while ago; some 20 years. My impression is they were not so good looking as they are now. They had been generally stretched on the foot, and no goring looks well after that.

Int. 11. What was the patent to which you have alluded as being the property of M'r Day?

(Same objection.)

Ans. The patent issued to Dupont & Hyatt on the 30th of November, 1840. That is my recollection. It was for the use of India rubber as a gore in boots and shoes and bootees.

Cross-examination by Mr. Keller, of counsel for complainant, de bene esse:

Cross-int. 12. Are you a defendant in one of the suits brought by M'r Smith on his patent for elastic fabrics?

Ans. I am.

AMOS D. WYCKOFF.

Subscribed and sworn to before me this 4th day of March, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to March 5th, 1870, at 11 a. m.

1138 NEW YORK, *March* 5, 1870—1 p. m.

Examination adjourned to March 26th, 1870, at 1 p. m.

NEW YORK, *March* 26, 1870—1 p. m.

Present, M'r Dean, of counsel for defendant, and M'r Smith, the complainant, in person.

The cross-examination of witness, Ferdinand Doebly, is waived by M'r Smith.

Deposition of Charles M. Bagot, recalled.

Cross-examination by the complainant, M'r Smith:

Cross-int. 12. In what time of the year did you come to this country?

Ans. I think in the latter end of 1848, as near as I can recollect.

Cross-int. 13. What was the name of the vessel you came over in?

Ans. The Mortimer Livingston.

Cross-int. 14. Can you recollect the month you landed in New York?

Ans. I believe it was on the 30th of November.

Cross-int. 15. Where did you go to reside after you landed here?

Ans. On the corner of 31st street and 8th avenue.

Cross-int. 16. With whom did you reside? Please state the name.

Ans. With M'r Palmer.

Cross-int. 17. How long did you stay there?

Ans. I suppose about three months.

Cross-int. 18. Where did you go from there to reside?

Ans. To West Hoboken.

Cross-int. 19. With whom did you reside there?

Ans. I cannot recollect the name at present. It was only for about two months. I was working for old Macrea at the time.

1139 Cross-int. 20. Where did you go to reside when you left West Hoboken?

Ans. I forget whether I went to work for George Flack or M'r Edge first.

Cross-int. 21. Please state where these two parties, Flack and Edge, resided.

Ans. Flack lived at the corner of Christopher street and West street; Edge lived in 31st street, in one of his uncle's houses.

Cross-int. 22. How long did you stay at those two places together?

Ans. For about two months, I suppose.

Cross int. 23. Where did you go to reside and work from there?

Ans. Corner 31st street and 8th avenue.

Cross-int. 24. State the name.

Ans. M'r Guttredge.

Cross-int. 25. How long did you stay there?

Ans. It might have been two months or it might have been six weeks; I can't exactly say.

Cross-int. 26. Where did you go to work from there?

Ans. To the best of my recollection, I think I went over to Newark.

Cross-int. 27. How long after you left Guttredge was it before you went over to Newark?

Ans. It might have been a week or ten days.

Cross-int. 28. Who did you go to work for at Newark?

Ans. M'r Gurney.

Cross int. 29. How long did you remain there?

Ans. It might have been two or three months; it might have been four months.

Cross-int. 30. Where did you go to when you left M'r Gurney, and in what part of the year was it that you left M'r Gurney?

Ans. I think I left M'r Gurney in the latter part of 1849, and went from him to work for M'r Purdy, as nearly as I can recollect.

Cross-int. 31. Where was M'r Purdy's factory?

Ans. In Beekman street.

Cross-int. 32. State what part of Beekman street.

Ans. Between Gold and Pearl streets, I think.

1140 Cross int. 33. How long did you remain with M'r Purdy?

Ans. Between five and six weeks.

Cross-int. 34. How long after you left M'r Purdy's was it before you obtained other work?

Ans. About a week.

Cross-int. 35. Where did you go to next?

Ans. I went back to M'r Flack.

Cross-int. 36. How long did you remain working with him?

Ans. It might have been seven or eight weeks.

Cross-int. 37. How long was it after you left M'r Flack before you procured other work, and where was the place at which you procured work?

Ans. It might have been four or five days. I set myself down to shoemaking after that.

Cross-int. 38. How long did you remain at shoemaking?

Ans. About four months.

Cross-int. 39. How long after you left shoemaking was it before you procured other work, and what was that work, and where?

Ans. I left my seat, and had other work immediately. The work was

shawl-weaving, and at M'r Barnum's, down near the Bowling Green, in Broadway.

Cross-int. 40. How long did you remain there?

Ans. About two months.

Cross-int. 41. How long after you left there was it before you procured any other work, and where was it, and what was it?

Ans. In a few days. I went to hair-cloth weaving, to superintend a lot of young ladies.

Cross-int. 42. How long did you remain there?

Ans. About a year.

Cross-int. 43. What year was it when you left the hair-cloth weaving?

Ans. I can't exactly recollect, for I have no memorandum.

Cross-int. 44. Where did you go from there?

Ans. I believe I went to work for M'r Gurney again.

Cross-int. 45. How long did you stay with him?

Ans. About a month; long enough to make two cuts of narrow bindings, to finish an order.

1141 Cross-int. 46. In what part of the year did you leave him?

Ans. Early spring, as near as I can recollect.

Cross-int. 47. Where did you go to from there?

Ans. I believe from there I stopped in Newark, working at trunk-making for about a month.

Cross-int. 48. Where did you go from trunk-making?

Ans. I forget whether I went to work with you or up at Morrisania.

Cross-int. 49. Whom did you work for at Morrisania?

Ans. M'r Amos.

Cross-int. 50. How long did you stay there?

Ans. It might have been two months or longer that I stopped with M'r Amos.

Cross-int. 51. Where did you go to work from there?

Ans. I think from there I went to Williamsburg.

Cross-int. 52. How long did you stop at Williamsburg, and what places did you work at?

Ans. I started with Curtis, White & Abry, and have been in Williamsburg ever since. I worked for Curtis, White & Abry for six or seven years, I suppose.

Cross-int. 53. What did you do in those years when you first went to Williamsburg before the formation of the company of Curtis, White & Abry?

Ans. I lived with a friend of mine somewhere about two months. I was not in Williamsburg all that time. I was going backwards and forwards—in and out—doing jobbing work around.

Cross-int. 54. Do you know a weaver by the name of Henry Pritchard, who used to work for me?

Ans. Yes.

Cross-int. 55. When did you last see him?

Ans. I think some three or four years ago this winter.

Cross-int. 56. Do you know where he now is?

Ans. I think somewhere about Trenton, New Jersey.

Cross-int. 57. Do you know what his occupation now is?

Ans. I do not.

Cross-int. 58. Do you recollect the time when you came to work for me?

1142 Ans. I can't, exactly, but I think it was in 1852 or 1853.

Cross-int. 59. Was you not working for me in December, 1851, on a 40 shuttle loom?

Ans. I don't recollect—not in December. It was warm weather.

Cross-int. 60. Do you recollect me at that time starting eight double-shuttle looms with a standing warp?

Ans. No, sir.

Cross-int. 61. What kind of a warp had it?

Ans. It went with a rise and fall at that time.

Cross-int. 62. Will you swear to that fact?

Ans. I will swear to what I saw at that time.

Cross-int. 63. Did not the loom you worked on have a rise and falling warp of India rubber?

Ans. Yes.

Cross-int. 64. Did not the eight double-shuttle loom which I was starting have fixed shuttle-boards, and one propeller or driver being attached to the other by a strap and pulley as it propelled the shuttles one way, the strap and pulley pulled the lower shuttles the other way?

Ans. Yes; and at the same time there was one tappet to raise the rubber.

Cross-int. 65. Is that as true as any other answer you have given?

Ans. It is true what I saw there.

C. M. BAGOT.

Subscribed and sworn to before me this 26th day of March, A. D. 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

1143 *Deposition of Henry G. Gurney, recalled.*

NEW YORK, *March 26th*, 1870—1 p. m.

Present, complainant Smith and counsel for respondents.

Cross-examination by the complainant, M'r Smith:

Cross-int. 85. Please state where your residence is now, and where you are to be found.

Ans. 61 Halsey street, Newark, New Jersey.

Cross-int. 86. Did you ever know Horace B. Ames, of Liberty street, New York?

Ans. Not to my recollection at present. I think not.

Cross-int. 87. Was there ever any suspender-weaving going on in John street, New York?

Ans. Not to my knowledge.

Cross-int. 88. What kind of looms were those you said you bought out of John street, New York?

Ans. I never said I bought looms in John street, New York. I bought some looms in Pine street, in New York, once.

Cross-int. 89. What was the name of the parties in Pine street?

Ans. I don't recollect the names of the parties.

Cross-int. 90. Had they been making suspenders there with those looms in Pine street?

Ans. The looms were stored in Pine street when I bought them. They were not working at all in Pine street.

Cross-int. 91. Did you ever know of any suspenders being made in Pine street or John street, or in Liberty street, in New York?

Ans. No, sir.

Cross-int. 92. How early was it when you first made ladies' belts?

Ans. In 1846 or 1847.

Cross-int. 93. What was the materials of which they were made, and of what colors?

Ans. Silk and silk and cotton, and of any color that was ordered.

Cross-int. 94. Whom did you sell those goods to? Please state their names and where they resided.

1144 Ans. Brown & Blake, at the corner of William and Cedar streets. I cannot enumerate customers, for the reason that I was at the factory in Newark, and my father and brother made sales of goods. We sold them in New York and Philadelphia; anywhere that we could find a market.

Cross-int. 95. Is that the only name you can recollect?

Ans. There was Henry Robinson, in William street, between Liberty and Cedar.

Cross-int. 96. Please state how those goods were made.

Ans. Made in an ordinary loom, by a weaver.

Cross-int. 97. Please state what an ordinary loom is.

Ans. A loom that is mounted on purpose for the work.

Cross-int. 98. (Question repeated.)

Ans. I shall have to refer to some works on weaving for me to give a lucid description without making technical errors.

Cross-int. 99. Give the best description you can from your own knowledge.

Ans. A loom consists of a frame made of iron or wood. It has its harness or heddles, its warp-beams, back and fore sleighs, batten, shuttles, knee-roll, warp-rolls. It depends whether it is a power-loom or a hand-loom how the different parts of the mechanism of the loom are arranged.

Cross-int. 100. Were all your ladies' belts made in an ordinary loom?

Ans. Some of them were and some were not. They were made according as occasion required.

Cross-int. 101. Please state how occasion required them to be made, and how they were made.

Ans. When we had samples, or different devices given to us as samples, we altered our looms accordingly. If I had a device shown to me I could give information to the best of my knowledge as to how we proceeded to make it.

Cross-int. 102. Is that the best answer you can give?

Ans. Yes, sir.

Cross-int. 103. Do you refuse to state the manner and method you made any and all your ladies' belts?

1145 Ans. I do not refuse.

Cross-int. 104. Then please to state how you did make them.

Ans. We made some ribbons with a Jacquared machine; some with Thompson's jack, some in plain harness—ground and grogram—some in single-hand high-case looms.

Cross-int. 105. Please describe the batten, lathe, and shuttles in making all your kind of ladies' belt-ribbon.

Ans. Batten consists of planks, bed, swords, driver, and shuttles.

Cross-int. 106. Is that the best description you can give?

Ans. Without a diagram it is.

Cross-int. 107. Is that all you know about weaving, to give such a vague description as your last answer?

Ans. I understood that I was asked what the batten was; not weaving.

Cross-int. 108. What was the width and depth of the fore-sleighs in which you made your ladies' belt-ribbons?

Ans. From 3½ to 4½ inches in depth, and from 1½ to 2 inches in width.

Cross-int. 109. In your statement of the depth of the fore-sleighs of 3½ to 4½ inches, what was the depth of the cap or heading top and bottom of the fore-sleigh?

Ans. I don't exactly understand what you mean by the cap of a sleigh.

Cross-int. 110. I mean the substance that is put front and back of a fore-sleigh top and bottom to be wrapped with thread or its equivalent, to separate the dents in the fore-sleigh, regular distances apart, and hold them fast in their places.

Ans. About ½ an inch, or thereabouts.

Cross-int. 111. Would not the dents with fore-sleigh stand a little up, higher than the wrapping, to separate and hold them apart?

Ans. That would depend upon the notion of the sleigh manufacturer. He could have them made so if he wished.

Cross-int. 112. How was it with the fore-sleighs that you had to make ladies' belt-ribbons, in that respect?

Ans. Some were made so and some were not. They were generally covered with a little piece of paper, gummed or glued over them.

1146 Cross-int. 113. In making your ladies' belt-ribbons what was the size of your shuttles, their width and their depth?

Ans. That depended upon the width of the space of the openings in the batten.

Cross-int. 114. How wide was the space in the openings of the batten wherein you made your ladies' belt-ribbon?

Ans. On one or two looms 1½ inches. Other looms up to 3 inches.

Cross-int. 115. What was the size of your shuttles, the width and the depth, in the battens of 1½ inches openings?

Ans. In the neighborhood of 3½ inches long, ⅜ of an inch in depth, and 2¼ inches in width, as far as I can carry it in my memory.

Cross-int. 116. What was the size of your shuttles, the width, the depth, and the breadth, in the battens of 1½ inch openings?

Ans. About the same in proportion. I don't profess to be able to answer these calculations at any moment. It is now ten or twelve years since these looms were sold. I have given you my best knowledge.

Cross-int. 117. What was the width, the depth, and the breadth of your shuttles in the battens with three-inch openings?

Ans. To the best of my recollection the length was between seven and eight inches, the width from two and one-half to three inches, and the depth about three-quarters of an inch.

Cross-int. 118. How deep was the slot cut, top and bottom of the shuttle, to run in the shuttle-boards?

Ans. A little over one-quarter of an inch. What a shuttle-board or slot is I do not very well understand. They are very ambiguous terms.

Cross-int. 119. I mean the boards or the planks where the shuttle runs across the opening, from one side of the opening to the other.

Ans. I understood Mr. Smith to ask me the depth of the groove in the shuttle, which I have stated to be a little over one-quarter of an inch in depth.

Cross-int. 120. Do you understand what I mean by the boards that the shuttles run on?

Ans. I think Mr. Smith means what silk weavers generally call planks.

1147 Cross-int. 121. Did the shuttles run on those planks which you have just mentioned?

Ans. They run on the underneath plank; the lower plank.

Cross-int. 122. Was not the top plank so fixed that it would lie in the upper groove or slot of the shuttle?

Ans. It was.

Cross-int. 123. Would the shuttles run on the bottom plank if there was not a top plank at the same time in the groove of the shuttle?

Ans. In some looms they would; in a peg loom.

Cross-int. 124. Did you ever see any loom working in your life without an upper plank as well as a lower one?

Ans. Yes, sir.

Cross-int. 125. Please state where it was.

Ans. In Market street, in Newark.

Cross-int. 126. Who had it, and what was the man's name?

Ans. To the best of my knowledge, a man by the name of Oldfield made it and showed it as a sample of what he could do, and was talking about a patent.

Cross-int. 127. Is the man living now?

Ans. I do not know.

Cross-int. 128. Please describe, in making ladies' belt ribbons, all and every manner you operated with the shuttles through the web.

Ans. Merely by throwing them to and fro, backwards and forwards.

Cross-int. 129. How many did you throw at a time through one web?

Ans. We only had one shuttle to a space in our looms.

Cross-int. 130. Does that embrace all the looms which you had?

Ans. No, sir.

Cross-int. 131. My question was, in all your looms.

Ans. In some looms we used half a dozen.

Cross-int. 132. How many shuttles passed through the web at the same time?

Ans. One; sometimes two; ordinarily one.

Cross-int. 133. What kind of looms were those that passed more than one?

1148 Ans. Highmease looms; one piece of work in the loom alone.

Cross-int. 134. Was that loom worked with the hands and feet?

Ans. Yes, sir.

Cross-int. 135. How were the shuttles thrown across the web by hand; that is, how did the hand operate to throw them through?

Ans. It threw them from one hand to the other, to and fro.

Cross-int. 136. Were those shuttles separate shuttles, or like two shuttles made with two fillings in one piece?

Ans. They were separate shuttles.

Cross-int. 137. Describe the width, depth, and breadth, and length of those shuttles.

Ans. Five inches long, in the neighborhood, 2¼ wide, and 1⅛ inch deep.

Cross-int. 138. How many inches would it be from the body of the work to the heddles—behind the fore sleigh?

Ans. From 10 to 12 inches.

Cross-int. 139. Were those fore-sleighs made any differently to the fore-sleighs you had in the other kind of looms you have spoken of?

Ans. They were deeper than an ordinary sleigh, and were made to order in Coventry, England.

Cross-int. 140. Please state how deep they were.

Ans. To the best of my recollection they were fully 4½ inches, perhaps a little over in the inside the lapping, in depth.

Cross-int. 141. When the shuttles passed through the web, what dis-

tance would the eye of the shuttle with the weft come through, be from the body of the fabric?

Ans. In the neighborhood of three inches.

Cross-int. 142. When you used two shuttles at one time, going through the web, was it a stationary warp?

Ans. The middle threads were stationary.

Cross-int. 143. Please state what you call the middle threads.

Ans. The rubber cords in a suspender, or the heavy ribs in a belt ribbon.

Cross-int. 144. When you used the larger number of shuttles in making these kind of goods, how did the weaver change his shuttles when he used more than one set of double shuttles?

1149 Ans. He laid them down. We did not use more than two in this kind of work.

Cross-int. 145. What other kind of work did you make when you used more than two shuttles to a web?

Ans. Fancy trimmings, for ladies' use.

H. G. GURNEY.

Subscribed and sworn to before me this 26th day of March, 1870.

JOSEPH GUTMAN, Jr.,
Examiner, &c.

Adjourned to April 4th, 1870, at 11 a. m.

Deposition of Samuel L. Johnson.

NEW YORK, *April 4th*, 1870—11 a. m.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant, in person.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Samuel L. Johnson. I am 43 years of age. I reside in New Brunswick, New Jersey. I am a manufacturer.

Int. 2. Were you ever a weaver, and, if yes, where?

Ans. I was. In England, at Halifax; and at New Brunswick, in the State of New Jersey.

(Objected to, as far as regards England, as it is a foreign user, and no notice given.)

Int. 3. When did you leave England?

(Objected to as immaterial.)

Ans. I left England in the spring of 1847.

Int. 4. Look at the exhibits now shown you, and state whether goods like any, and which of them, were made in England before you left.

(Objected to as incompetent.)

1150 Ans. There is nothing here but what I have seen made in England, so far as the way and manner in which the weft threads cover the rubber.

(Said exhibits are numbered 1, 3, 4, 6, 7, 8, 5, 2, 9, 10, 14, 15, and Exhibits Wakeman 2 and Wakeman 5.)

Int. 5. For what purposes were goods thus made used in England, and how early?

(Objected to as incompetent.)

Ans. For suspenders, and to my knowledge as early as 1840.

Int. 6. In what places?

Ans. At Hope's, in Manchester, England, and at Brierly's, and one

other place, the name of which I cannot remember, at Halifax, in England.

Int. 7. To what extent were they sold in the market and used in Manchester, England, at that time?

Ans. I can define it best by using the term "very extensively." This Exhibit 1, J. G., j'r, was very common.

Int. 8. Were there any suspenders in use, made like Exhibit No. 9, with silk weft on one *one* side and cotton on the other?

(Objected to as incompetent.)

Ans. There were.

Int. 9. When did you begin to weave in New Brunswick, in New Jersey, for whom, and what kind of goods did you make?

Ans. I began either in 1848 or 1849, for Horace H. Day, and made goods similar to Exhibit No. 1 in principle. Some of those goods were for suspenders, others were for shoe goring.

Int. 10. How early was shoe-goring goods made in New Brunswick?

Ans. To my knowledge in 1848 or 1849; I am not certain which.

Int. 11. How do you fix the time?

Ans. By the cholera year. While there I was attacked with that disease, which was in 1849. I had woven such goods before I was so attacked.

Int. 12. Look at Exhibit Helm, J. G., j'r, and state what you know about it.

Ans. I recognize it as like the goods we then made, and believe it to be a piece of such goods.

1151 Int. 13. Did all the goods you then made have a similar selvedge? If not, what kind of selvedge did the others have?

(Objected to as leading.)

Ans. No. The selvedge of some was made by the weft only going around the rubber, without any additional warp threads.

Int. 14. How were the suspenders there made?

Ans. Mostly with round edges, like Exhibit Helm, J. G., j'r. Some with the body of the fabric like said exhibit, but most of them with the rubber covered by the warp and weft.

S. L. JOHNSON.

Subscribed and sworn to before me this 4th day of April, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Deposition of John Helm.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. John Helm; I am 68 years of age; I reside at New Brunswick, New Jersey; I am a rubber-worker.

Int. 2. How long has that been your business, and where?

Ans. Since 1840; in New Brunswick; in Malden, Massachusetts, and at Andover, Massachusetts.

Int. 3. Were you ever in the employ of Horace H. Day; and, if yes, between what dates?

Ans. I was; commenced for him in 1840, and remained with him till he sold out, somewhere about 1860.

Int. 4. Were you in his employ at the time Samuel L. Johnson was in his employ?

Ans. I was.

Int. 5. What was your particular department of business?

Ans. I had charge of the manufacturing of the rubber, and of the machinery in the manufactory.

1152 Int. 6. Look at Exhibit Helm, J. G., jr., and state where that was made, if you know, and when.

Ans. That was made in Horace H. Day's manufactory at New Brunswick, New Jersey. I believe in 1849.

Int. 7. During what period of time were goods like said exhibit made in said factory, or attempted to be made?

Ans. I think we were trying to make them in 1848, and up to the beginning of 1850.

Int. 8. Is there any circumstances by which you can fix the time?

Ans. I know that we were trying to make them before M'r Johnson came, and that after M'r Johnson came the hotel keeper next to the factory of Horace H. Day was taken with the cholera and died. M'r Johnson also had the cholera, but recovered. The name of the hotel keeper was Schenck. It was in the year 1849 that Schenck, the hotel keeper, died.

Int. 9. Is the rubber in said exhibit vulcanized, or is it native or pure rubber?

Ans. I believe it is vulcanized, and that it is composed of rubber, sulphur, and the carbonate of magnesia. I was making experiments at that time with different articles for the purpose of vulcanizing, and I think this is composed as I have stated.

Int. 10. Is there any difference between the manner in which rubber is vulcanized in late years and the manner in which it was vulcanized in the early use of that process, or in the proportions of ingredients used?

Ans. There is a difference. In the early years we only used dry heat; now we use steam, finding it better, and sometimes we use what is called the cold process. The proportions of ingredients have always varied from the very first, according to our ideas, and what the article was designed for.

Int. 11. To what extent have you been engaged in curing rubber since 1840?

Ans. That has been my entire business, and I have done it all manners.

Int. 12. How long will rubber, cured or vulcanized, retain its elasticity?

1153 Ans. That will depend altogether on circumstances. Rubber that is exposed to the light and atmosphere, in many cases, will not retain its elasticity for twelve months. If it is covered with fabrics, and not exposed, it will last for years.

Int. 13. For how many years?

Ans. I have vulcanized rubber in my possession, at my home, that has been manufactured for sixteen years, that retains its elasticity.

Int. 14. Whether its retention of its elasticity depends also on the manner in which it is vulcanized?

Ans. It depends both in the manner and the component parts. If rubber is cured too much it will give way very soon. If there is too little sulphur it will sooner give way than if a sufficient quantity is present. If you put lamp-black, white lead, litharge, zinc, or any other foreign matter in excess, it impairs the elasticity of the rubber and its durability.

JOHN HELM.

Subscribed and sworn to before me this 4th day of April, 1870.
JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to April 4th, 1870, at 3 p. m.

Deposition of Samuel L. Johnson.

NEW YORK, *April* 4, 1870—3 p. m.

Direct examination resumed by M'r Dean:

Int. 15. Did you see in this country any woven gusset web for shoe gores before you went to M'r Day's employment? If yes, where and when?

(Objected to as leading.)

Ans. I did; in Boston; at the store of M'r King, in Washington street, in 1847.

Int. 16. How were *were* the rubber cords in said gusset-webbing covered?

(Objected to.)

Ans. Covered by the weft.

Int. 17. How, in respect to the covering of the rubber cord, did 1154 said gusset-web compare with that afterwards made in M'r Day's manufactory?

(Question objected to as leading.)

Ans. It was similar.

Cross-examination, de bene esse, by M'r Smith, reserving the right to object to the testimony of the witness:

Cross-int. 18. At what age was it when you began to learn the art of weaving?

Ans. I think when I was about thirteen years of age.

Cross-int. 19. State where it was, and the names of the parties that you learned it with.

Ans. It was in Halifax, England. The name of the party was William Brown.

Cross-int. 20. State what kind of goods they were that you made at William Brown's.

Ans. They were webs known as shoe webbing, suspender webbing, belt webbing, and the smaller wares.

Cross-int. 21. How early do you fix that date?

Ans. Thirty years ago.

Cross-int. 22. Did you work by hand or steam power?

Ans. Mainly by hand at this place.

Cross-int. 23. Was it what they call swivel looms or hand looms?

Ans. Both.

Cross-int. 24. Please to describe the hand-looms; whether they were single web or more than one web in a loom.

Ans. Some of the belt webbings were single looms or single webs; some double. The shoe webbing and suspender webbing were some four, some six, and some ten in a loom. Those four and six were what were termed hand-looms; those ten were swivels.

Cross-int. 25. Please state how you operated the shuttles, making them pass to and fro through the web, in those four and six hand looms just mentioned.

Ans. They were forced with a driver sent by the hand.

Cross-int. 26. Were they filled up to work with lambs and jacks?

1155 Ans. I should want to know the meaning of those two terms before I could answer intelligently.

Cross-int. 27. Please to describe in your own terms how they were fitted up.

Ans. There was a box above the harness, or healds, as they were sometimes termed, in which there were eight pieces of wood. From the ends of these pieces of wood were cords connecting to the shafts at the ends and middle. There were cords from the under center of those shafts to four pieces of wood underneath the shafts, and those under-shafts were connected to the treddles.

Cross-int. 28. What passed from those eight pieces of wood down through the harness to those pieces of wood under the harness?

Ans. Nothing in the class of work I have described.

Cross-int. 29. Are you positive of that fact?

Ans. Yes, sir.

Cross-int. 30. What were those pieces of wood attached to besides the treddles under the harness?

Ans. As I have before stated, to the harness.

Cross-int. 31. Please describe how the warp opened when you put your foot on the treddle and pressed it down.

Ans. The right foot went upon the treddle No. 1 to the right hand; the left foot upon treddle No. 3 from the right hand, raising the first and third shafts; the right foot upon the second treddle, and the left foot upon the fourth, raising the second and fourth shafts; in that order, necessary to form a twill.

Cross-int. 32. Did you press your shuttles through every time you raised a shaft?

Ans. At every change of the foot the shuttle passed through.

Cross-int. 33. In the swivel looms you mentioned giving ten pieces of web in the loom, had you a handle that went across the front of the loom, what we used to call a hand pool, to work the loom?

Ans. There was such a handle. We never called it a pool.

Cross-int. 34. Please state what you did call it.

Ans. I do not remember the name.

Cross-int. 35. What kind of goods did you make in those swivel looms?

1156 Ans. Some of them a shoe webbing; some of them suspender webbing; some of them boot webbings; some of them carpet bindings, and other small ware articles.

Cross-int. 36. Were those goods made all in one loom?

Ans. No, sir.

Cross-int. 37. How many pieces had you in the loom that you made shoe webbing in?

Ans. In the hand-looms, four or six; in the swivel looms, ten.

Cross-int. 38. How wide was the space between the shuttles in those looms?

Ans. I think about three inches; I could not be positive as to that.

Cross int. 39. What was the breadth of those looms from side to side—how many feet?

Ans. I could not answer definitely. I knew at that time, but it is so long since that I have forgotten.

Cross-int. 40. Please to describe what kind of cams you had upon them.

Ans. The treadle cams were quarter cams.

Cross int. 41. How many had you of them?

Ans. Four.

Cross-int. 42. Did your shuttles pass through the web every time the cam operated upon the treddle?

Ans. Yes.

Cross-int. 43. When did you leave Halifax?

Ans. In the year 1847.

Cross-int. 44. When were you first in M'r Hope's factory, in Manchester, England?

Ans. I believe it was in 1840.

Cross-int. 45. What part of Manchester was that in?

Ans. I could not tell you.

Cross-int. 46. What kind of entrance had it to it; and how many stairs did you go up before you got into the weaving-room?

Ans. It is so long since that I do not remember.

Cross-int. 47. What caused you to go there?

Ans. I went there on an excursion party.

Cross-int. 48. Who went with you?

1157 Ans. My brother.

Cross-int. 49. Any one else?

Ans. There were others.

Cross-int. 50. State who they were.

Ans. I cannot call the names.

Cross-int. 51. Who introduced you to M'r Hope to get into his factory?

Ans. I was not introduced to M'r Hope.

Cross-int. 52. Who took you into the factory?

Ans. One of the foremen.

Cross-int. 53. State his name.

Ans. I do not know it.

Cross-int. 54. Where did you first see that foreman?

Ans. At M'r Hope's factory.

Cross-int. 55. In what manner did you get in the factory to see him?

Ans. He took me and my brother in.

Cross-int. 56. If he was in the factory, how did he see you outside to take you in?

Ans. My brother being slightly acquainted with him, sent for him.

Cross int. 57. When did your brother first become acquainted with him?

Ans. I do not know.

Cross-int. 58. Whom did he send to fetch him out?

Ans. I do not know.

Cross-int. 59. When you went in the factory did you see a porter in the lodge you went through?

Ans. I do not remember.

Cross-int. 60. Are you not aware that the entry to the factories at Manchester are kept locked, so that no stranger can go in without permission?

Ans. I am not.

Cross-int. 61. Were the suspenders you saw making at M'r Hope's factory in Manchester similar goods to what you made in Halifax?

Ans. Not similar to those I have described as having made at M'r Brown's.

Cross-int. 62. Did you see any elastic goring being made there for shoes or Congress boots?

1158 Ans. Not to my knowledge.

Cross-int. 63. When did you leave England to come to this country?

Ans. 1847.
Cross-int. 64. What part of 1847?
Ans. I think it was in June.
Cross-int. 65. What was the name of the vessel you came in?
Ans. Queen of the West.
Cross-int. 66. At what port did you land in this country?
Ans. New York.
Cross-int. 67. How long did you remain in New York?
Ans. A few days.
Cross-int. 68. Where did you go to from New York?
Ans. Boston.
Cross-int. 69. Where did you go to there in Boston? What place did you reside at when you went to Boston?
Ans. I believe it was the United States Hotel, down by the Old Colony Depot.
Cross-int. 70. Can't you speak more positive as to the name of the hotel you resided at when you went to Boston?
Ans. I think that was the place.
Cross-int. 71. How long did you remain at that hotel?
Ans. Only a short time, I think.
Cross-int. 72. How short a time did you stop at the United States Hotel?
Ans. I could not tell the exact time.
Cross-int. 73. What was your business that called you to Boston in 1847?
Ans. No special business.
Cross-int. 74. How long did you remain in Boston.
Ans. I remained in Boston either one or two years.
Cross-int. 75. Where did you go to when you left the United States Hotel?
Ans. I went and boarded with a widow lady by the name of M'r's McGea; I think that was her name.
Cross-int. 76. Where did she reside?
Ans. I think it was in Milk street, or somewhere near there; I think so; I can tell by reference; I am not sure now.
159 Cross-int. 77. What part of Milk street?
Ans. I could not tell you.
Cross-int. 78. Near Washington street?
Ans. I think it was somewhere near Washington street; near Boylston market.
Cross-int. 79. How long did you remain with her?
Ans. I believe nearly all the time I was in Boston.
Cross-int. 80. How long did you remain in Boston?
Ans. One or two years; I am not positive which.
Cross-int. 81. Is that the nearest time you can state; one or two years?
Ans. That is as near as I can remember.
Cross-int. 82. What business did you follow while you were in Boston?
Ans. I was in M'r King's fancy and trimming establishment.
Cross-int. 83. How long were you in that establishment?
Ans. I could not say definitely how long.
Cross-int. 84. Can't you give no time that you remained there?
Ans. Not definite time, I could not.
Cross-int. 85. Were you there twelve months?
Ans. I could not say how many months.
Cross-int. 86. Were you there nine months?

Ans. I could not answer more definitely as to the time I was there.
Cross-int. 87. Were you there six months?
Ans. I could not tell how many months without reference to my ournal.
Cross-int. 88. Where is your journal?
Ans. Home.
(Complainant gives notice that he requires the witness to produce the journal referred to.)
Cross-int. 89. Will you produce that journal?
Ans. I am not prepared to answer.
Cross-int. 90. Do you refuse to produce it?
Ans. I am not prepared to answer.
Cross int. 91. (Question repeated.)
1160 Ans. I am not prepared to answer.
Cross-int. 92. When did you last see that journal?
A. Not for some time.
Cross-int. 93. How long do you call some time?
A. I think I have not seen it in several years.
Cross-int. 94. Will that journal state how long you were at Boston, what you were doing, and when you left?
Ans. It may, but I am not sure that it will.
Cross-int. 95. Were you there one month at M'r King's in Boston?
Ans. I believe I was there several.
Cross-int. 96. Were you there five months?
Ans. I may have been and may not have been. I could not say definitely.
Cross-int. 97. Were you there four months?
Ans. I may have been.
Cross-int. 98. Were you there three months to your knowledge?
Ans. I think I was.
Cross-int. 99. What makes you think you were there three months?
Ans. I have no definite cause.
Cross-int. 100. Were you there two months within your knowledge?
Ans. I have already said I believed I was there three months.
Cross-int. 101. You answered before that you thought you were there three months. I now ask you how long you were at M'r King's within your own personal knowledge, without any thinking about.
Ans. I cannot tell.
Cross-int. 102. Were you there at all within your knowledge?
Ans. I have before stated I was.
Cross-int. 103. Were you there a week within your knowledge?
Ans. I believe I was.
Cross int. 104. Were you there two weeks within your knowledge?
Ans. I believe I was there several weeks.
Cross int. 105. Were you there a month within you knowledge?
Ans. I believe I was.
Cross int. 106. Were you there two months within your knowledge?
Ans. I believe I was.
1161 Cross-int. 107. Were you there three months within your knowledge?
Ans. I think I was, but cannot speak more definitely.
Cross-int. 108. Were you there four months within your knowledge?
Ans. I may have been.
Cross int. 109. Were you there five months within your knowledge?
Ans. I do not know.

Cross int. 110. What kind of goods did M'r King keep in his trimming store?

Ans. All the goods usually kept in a first class fancy store.

Cross-int. 111. Please describe them.

Ans. All kinds of trimmings for ladies' use; fringes, and ribbons, and general notions, such as ladies wear.

Cross-int. 112. Please state in what part of Boston M'r King's store was.

Ans. His store was in Washington street, and his manufactory over the store.

Cross-int. 113. Manufacturing what?

Ans. Different kinds of trimmings and fringes, tassels, &c.

Cross-int. 114. What was the number of his store?

Ans. I do not remember.

Cross-int. 115. What part of Washington street was it in?

Ans. I could not say exactly, but think it was somewhere near School street, but am not positive.

Cross-int. 116. Was it as far down as the church at the top of Milk street?

Ans. I could not answer. All that I know definitely is, that it was in Washington street.

Cross-int. 117. Which end of Washington street was it on?

Ans. I think it was nearer the middle of Washington street.

Cross int. 118. What do you call the middle of Washington street?

Ans. Some distance from one end of the street and some distance from the other.

Cross-int. 119. What side of the way was it on from School street, if you were going west?

1162 Ans. How does Washington street run, before I can give you the answer?

(Question withdrawn.)

Cross-int. 120. Washington street begins in Cornhill. If you were going down Washington street from Cornhill, on which side of Washington street would M'r King's store be on?

Ans. On the right hand.

Cross-int. 121. How far down?

Ans. Some distance. I could not say definitely. I am not familiar with the names of the streets. It is so long since I have been there.

Cross-int. 122. How came you to see Congress boots in M'r King's store?

Ans. Of almost all the fine imported goods, samples of them were brought to M'r King's store for him to look at. He brought me a sample of a ladies' fine silk belt with a round edge on it, and asked me if I had ever made any such. My answer was no, but that I thought I could make it. He wished me to do so, and I did. He also showed me a sample of this imported goring.

Cross-int. 123. Where did you go to when you left M'r King's?

Ans. With M'r Moore, an Englishman, who was a short-hand writer, and engaged on the Boston Bee. I was engaged with him for a short time as reporter.

Cross-int. 124. Are you a short hand-writer?

Ans. I am.

Cross-int. 125. Will you please write down on a piece of paper now handed you how long you were with M'r Brown?

(The defendants' counsel objects unless it is put upon the record.)

Cross-int. 126. Put it on the record then.

(The witness being about to put it down, complainant withdraws the question. Complainant does not withdraw the question.)

Ans. (Witness here writes down certain short-hand characters.)

Cross-int. 127. Please state in what system of short-hand writing you wrote that answer down in.

Ans. Phonography.

Cross-int. 128. Please state how long you stayed with M'r Moore?

1163 Ans. About three months, I think.

Cross-int. 129. Where did you go to when you left M'r Moore?

Ans. New Brunswick, New Jersey.

Cross-int. 130. What did you do when you first went to New Brunswick, New Jersey?

Ans. Took charge of M'r Day's weaving department.

Cross-int. 131. Do you know a man that was in M'r Day's department that was brought from Philadelphia to superintend the weaving?

Ans. I do not.

Cross-int. 132. Was there not such a man there sent by M'r Horstman, of Philadelphia, at M'r Day's request, to put up the looms, who stayed there several years and took charge of them?

Ans. Not to my knowledge.

Cross-int. 133. Was the shoe-goring that you made at Horace H. Day's, in New Brunswick, similar to that you made at Halifax, England?

Ans. I never made any shoe-goring in England.

Cross-int. 134. Was the shoe-goring made at Horace H. Day's, at New Brunswick, while you were with him there, made in a similar way and manner that you made suspenders in Halifax, England, which you have described to-day?

Ans. The shoe-goring we made at Horace H. Day's was made similar to some of the elastic or suspender webbing which I made at Halifax, in England.

Cross int. 135. In your testimony and description of what you have made at Halifax, England, in your cross-examination, were they similar to the shoe-goring made at M'r Day's factory, at New Brunswick, New Jersey, in 1849 and 1850?

Ans. The suspender-webbing which I described in my cross-examination was not elastic webbing, and not similar to what I made with Horace H. Day.

Cross-int. 136. You say that you made such goods as M'r Day's in England. Where did you make them?

Ans. I said that I made goods in England—elastic—similar to those I made for M'r Day, but that those goods of which I gave a description in my cross-examination were not elastic goods.

1164 Cross-int. 137. How, then, in your cross-examination, could you describe shoe-goring?

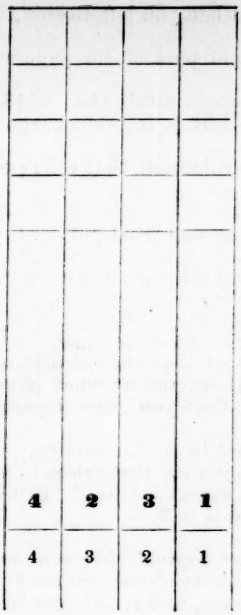
Ans. I did not describe it. I described shoe-webbing and suspender-webbing.

Cross-int. 138. Where did you make elastic webbing?

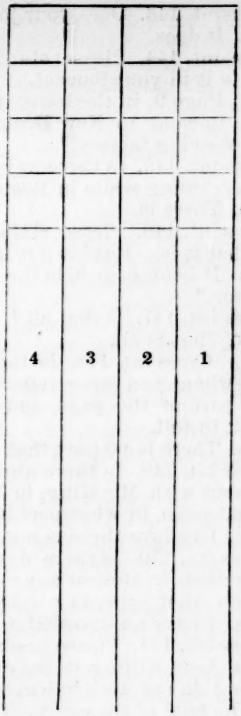
Ans. At M'r Brierly's, Halifax, England.

(Complainant again requests the witness to produce his journal, before referred to, to-morrow.)

Examination adjourned to April 5th, 1870, at 10 a. m.



Johnson diagram, No. 1.—J. G., j'r, Examiner.



Johnson diagram, No. 2.—J. G., r, Examiner.

1165 NEW YORK, *April* 5, 1870—10 a. m.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant, in person.

Cross-examination resumed by M'r Smith:

Cross-int. 139. Have you produced the journal that you spoke of in your evidence yesterday?

Ans. I have it with me.

Cross-int. 140. Will you produce it?

Ans. I do now produce it.

Cross-int. 141. Will you please to refer to that part and page of your journal where it states when you went to Boston and when you came away?

Ans. On the 9th page, in the middle of page, commencing August.

Cross-int. 142. Please state what the reference is. Read it in full.

Ans. It says, "August 20, 1848, landed at New York; set sail for Boston 24th."

Cross-int. 143. Does your journal state when you left Boston?

Ans. It does.

Cross-int. 144. Please state the page and part of the page where it refers to it in your journal.

Ans. Page 9, in the lower part of the page, "July the 30, 1849, left Boston to come to New Brunswick, New Jersey, to take charge of M'r Day's weaving factory."

Cross-int. 145. Is there any part of your journal that refers to what you were doing while in Boston?

Ans. There is.

Cross-int. 146. Please state on what page and what part of the page, and what it is. Read it out in full.

Ans. It is on page 9, in the middle part of the page, and says, "reporting some."

Cross-int. 147. Is that all?

Ans. That is all.

Cross-int. 148. Is there any part of that journal that refers to
1166 whom you were reporting for? If so, say on what page, what part of the page, and who it was that you were reporting for. Read it in full.

Ans. There is no part that mentions that to my knowledge.

Cross-int. 149. Is there any part of that journal that refers to your engagement with M'r King, in Washington street, Boston? If yea, state on what page, in what part it is, and read it in full.

Ans. I believe there is not.

Cross-int. 150. Is there any part of that journal that refers to your transactions in Boston any more than you have already stated? If yea, state on what page, in what part of the page, and read it out in full.

Ans. I have no knowledge of any.

Cross-int. 151. Please produce that journal, to be marked in evidence.

Ans. I am willing to have it marked for identification by the examiner, but do not wish to leave my private journal here. I will produce it at the trial of the cause, if desired by counsel, and will entrust it to counsel, that they may see the entries and the manner in which it has been kept, if required.

(This was assented to by both sides. Journal marked for identification, Johnson, No. 1, J. G., j'r.)

Cross-int. 152. What was the Christian name of M'r King, that you have testified to in your evidence, and in whose employment you were in Boston?

Ans. I do not remember.

Cross-int. 153. In your description of the looms on which you worked in Halifax, England, you described the twill; on which side of the fabric was the twill?

Ans. I did not describe a loom as a twill-loom, but said that a twill could be made upon those looms.

Cross-int. 154. In your answer to cross-interrogatory 31 you say the right foot went upon the treddle No. 1, to the right hand; the left foot upon treddle No. 3, from the right hand, raising the first and third shafts; the right foot upon the second treddle, and the left foot upon the fourth, raising the second and fourth shafts in that order, necessary to form at will. On what part of the surface, under or over, would the twill lie upon?

1167 Ans. If each shaft contains an equal number of threads, and those threads in their proper consecutive order in these shafts, a twill would be made upon both sides.

Cross-int. 155. (Complainant here offers witness a diagram, the larger figures showing the order that his feet went upon the treddles, the smaller figures showing the treddles in consecutive order, and requests witness to mark down in the squares of the diagram, which diagram is drawn out for four heddle shafts, capable of being designed upon for every variety of work to be made upon four shafts by four treddles, and requests witness to mark down in the squares of the diagram the method of forming a twill upon both sides of the fabric.)

Ans. The right foot is placed upon treddle No. 1; the left foot upon treddle No. 3; in that condition the weft passes through the warp; the right foot is moved to treddle No. 2; in that condition the weft passes the warp; the left foot is moved to treddle No. 4; in that condition the weft passes the warp; the right foot is moved to treddle No. 1; in that condition the weft passes the warp; the left foot moves to treddle No. 3, as at first described, and continued in the same way. In speaking of the numbers, I have referred to the lower numbers in the diagram, which are the numbers of the series of treddles.

Cross-int. 156. Please to mark down in the squares of the diagram what would make a twill on both sides of the fabric.

Ans. It has been eighteen years about since I made a diagram, or since I followed weaving professionally, and I wish time to make that diagram and think over it.

The diagram which has been handed to the witness by M'r Smith, marked in evidence Johnson Diagram No. 1, J. G., J'r. Complainant here shows witness Johnson Diagram No. 2, and asks him to——

Cross-int. 157. Mark down on that diagram the twill on one side of the fabric.

(Objected to on the ground that the examination does not relate to any fabric about which there is any issue in these cases, nor to any matter opened by the direct examination.

Complainant replies that in a former deposition of the witness
1168 the counsel for defendants, under objections, put in evidence transactions by this witness in regard to weaving at Halifax, England.

Ans. All twills I ever made were made on both sides.

Cross-int. 158. Can you not describe, as a weaver, how a twill is made on one side of the fabric?

Ans. I believe I can, but, for my reason before given, wish time to think over it.

Cross-int. 159. When you are weaving a twill, or a fabric, and the twill runs from right to left, how would you change that twill to make it run from left to right, from the selvedge?

Ans. To make it run from right to left I draw my threads through the heddles, beginning at 1, 2, 3, 4, and so on for all the warp; to make it run from left to right, I reverse the order of putting in the threads.

Cross-int. 160. Suppose you wanted to turn the twill in the center of the fabric, describe the order of drawing in the warp threads to make that turn of the twill in the center of the fabric.

Ans. I would draw in one-half of the warp threads one way and the other half the other way.

Cross-int. 161. In my former question I asked you how you would make your turn of the twill in the center of your fabric. In a former answer you said you draw your threads in the harness consecutively, 1, 2, 3, 4. When you wanted to turn the twill in the center of the fabric, how would you commence to turn it, and upon what heddle shaft would you turn it?

Ans. I would draw one-half of the warp threads through the heddles, in the manner stated, 1, 2, 3, 4; if the half of the warp terminated on No. 4, I would commence the reverse drawing in on No. 3.

Cross-int. 162. Suppose the half of the warp did not terminate on No. 4, what then?

Ans. I should commence drawing in the warp threads backwards on one shaft previous to the shaft upon which the last shaft was drawn of the half of the warp.

Cross-int. 163. Would not that leave a blunted turn and not a sharp turn in the twill?

Ans. It would leave the acute angle which a twill gives, no blunt.

1169 Cross-int. 164. You say in your answer to the 31st cross-question, that the right foot went upon the treddle No. 1, to the right hand, and the left foot upon the treddle No. 3, from the right hand, raising the first and third shafts, the right foot upon the second treddle, and the left foot upon the fourth treddle, raising the second and fourth shafts; what kind of a fabric would that make?

Ans. When the feet are placed upon the treddles, and the shafts raised, and the shuttles thrown in the consecutive order as described in my answer to cross question 155, it will form a twill.

Cross-int. 165. (Question repeated.)

Ans. The answer I have just given is my answer to the question, and is the correct answer.

Cross-int. 166. (Question repeated.)

Ans. I can answer it in another form if you wish it.

Cross-int. 167. Answer it.

Ans. When the right foot is upon treddle No. 1, and the left foot upon treddle No. 3, and the shuttle or weft is thrown through, the right foot being then changed to treddle No. 2, and the weft thrown through, the left foot being changed to treddle No. 4, and the weft thrown through, the right foot being changed to treddle No. 1, and the weft thrown through, and so on in that consecutive order, a perfect twill is formed.

Cross-int. 168. Is that the only answer you can give in answer to my question or cross-interrogatory 31?

Ans. That is the correct answer.

Cross-int. 169. If the first heddle was raised and the shuttle passed through, and heddle No. 3 was raised and the shuttle passed through with the weft, heddle No. 2 was raised and the shuttle and weft passed through, and heddle No. 4 was raised and the shuttle passed through, what kind of a fabric would it make? I mean the shuttle and weft passing through always together.

Ans. If heddle No. 1 was raised and the shuttle and weft were passed through, it would form a fabric having one-fourth of the warp upon the upper side and three-fourths on the under side; if heddle No. 3 were raised, it would form a fabric with one-half the warp on the upper

1170 side and one-half the warp on the under side; if heddle No. 2 were raised, it would form a fabric with three-fourths of the warp on the upper side and one-fourth on the under side; if heddle No. 4 were raised, all the warp would be above the weft.

Cross-int. 170. I will put the question according to your answer to cross-question 31. If heddle shafts Nos. 1 and 3 were raised and the weft passing through and they to change and sink down and Nos. 2 and 4 rise, and the weft passing through, what kind of a fabric would it make?

Ans. That was not my answer to cross-question 31.

Cross-int. 171. What was your answer to cross question 31?

Ans. The right foot is placed upon treddle No. 1; the left foot upon treddle No. 3, which raise first and third shafts, and the shuttles and weft passes through the warp.

(Complainant objects that the witness has no right to hold the answer in his hand that he has given before.

The witness passes the answer referred to to the complainant from whom he had received it.)

Then the right foot raises shaft No. 2 and lowers shaft No. 1, and the shuttle and weft go through. The left foot raises shaft No. 4 and lowers shaft No. 3, and the shuttle and weft go through. The right foot raises shaft No. 1 and lowers shaft No. 2, and the shuttle and weft go through, and so on in that consecutive order. The fabric so made will be a *trill*.

Cross-int. 172. If the first and third heddle shafts were raised and the weft passing through, and the second and fourth heddle shafts were raised and the first and third falling down, what kind of a fabric would it make?

Ans. Never having seen such a fabric, to my knowledge, I could not tell.

Cross-int. 173. Is that your best knowledge and information about weaving?

Ans. I do not understand the question.

Cross-int. 174. From your knowledge as a weaver, if the first and third heddle shafts were raised and the weft passing through, and the second and fourth raising the other two shafts falling at the same time as they raised, what kind of a fabric would it make? Speak from your knowledge as a weaver.

1171 Ans. If that motion of shafts, first and third, second and fourth, first and third, and second and fourth again, were continued, the shuttle and weft passing through the warp at each consecutive change, it would be similar to a simple up and down motion or two shaft motion.

Cross-int. 175. If the first and third shafts were raised, the weft passing through, then the third shaft falling and the second raising, and the weft passing through, and the first shaft falling and the fourth raising and the weft passing through, and the third shaft raising and the second falling and the weft passing through, from your knowledge as a weaver, what kind of a fabric would it make?

Ans. I suppose such a fabric would be half twill motion and half simple or two-shaft motion.

Cross-int. 176. In your answer to cross-interrogatory No. 26, you were asked if they were fitted up to work with lambs and jacks. Your answer is that I should want to know the meaning of those two terms before I could answer correctly. How is it that you don't know the terms used all through England and Scotland, France and Germany, to those two items, when all patents that has ever been issued, and all publications ever published that has treated upon the subject, have used the terms lambs and jacks, or its equivalent? The term is used in England to my knowledge for fifty-five years, never hearing any other terms applied for them.

(Question objected to.)

Ans. I made that answer, first, because I wished clearly to know what M'r Smith meant, and secondly, because I had forgotten those terms, as I could not now use or call to mind many of the minor technicalities of that business.

Cross-int. 177. In describing the manner in which you made the goods

in Halifax, England, on those pieces of wood, as you called them, under the harness, how many cords to each treddle went from those pieces of wood under the harness down to each treddle?

Ans. In making the goods, which I have described in my cross-examination, and which were not elastic goods, there is one cord goes from the piece of wood, lamb, or jack (I forget which it is called), to the treddle.

1172 Cross-int. 178. Do you mean to each treddle?

Ans. I mean one cord from one of each of those lambs or jacks, under the harness, to one of the treddles. That is to say, there being four lambs or jacks under the harness, and four treddles, one of those lambs or jacks only is attached to one treddle.

Cross-int. 179. In your answer to the cross-interrogatory No. 28, in answer to the question: What passes from the eight pieces of wood down through the harness—speaking of those pieces of wood above the harness—to those pieces of wood under the harness, your answer is, Nothing in the class of work I have described. Then, in cross-interrogatory No. 29, you are asked: Are you positive of that fact? Your answer is, Yes, sir. Now you have described your manner of making these goods. Please tell me from your description how you raised the harness up for passing the weft through. You have described your method of pulling them down, and fix yourself in that position, and left yourself no manner or means of raising your harness, for the weft to go through, but only over the fabric.

Ans. The shafts above the harness being eight in number, four at each end and each shaft, or lamb, or jack—or by whatever name they may be called—having two ends, the cords from the extreme ends of these eight shafts or pieces of wood are brought and fastened to the ends of the heddle shafts. The middle ends of those pieces of wood are fastened to the center of these heddle shafts in such a manner that when the first is drawn down it raises the third up; when the second is drawn down it raises the fourth up, and so on through the operation.

Cross-int. 180. Supposing that were the case that you have described, you could not make but one kind of fabric; what description of fabric would it be?

Ans. It would be a fabric which could have twills backwards and forwards, and which could also possess what is known among weavers as check fabrics, or patterns, varying in accordance with the manner the threads were placed through the shafts or in the heddles.

Cross-int. 181. In making goods, as you described, in Halifax, England, four and six webs in a loom, how could you lift your heddle shafts up evenly from the center?

Ans. By having the cords which connect from the ends of the
1173 pieces of wood, above the harness, an equal length, and also the cords connecting from the center of those pieces of wood, and connecting with the heddles, also of an equal length.

Cross-int. 182. You are positive you can make a twill in the manner above described, are you?

Ans. I can make a twill in the manner described in answer to cross-question 155.

Cross-int. 183. Can you make a twill in the manner you have described in answers to my last two or three questions?

Ans. I am not aware that any manner has been specified in the last two or three questions, but can make the twill in the manner described in answer to cross-question 155.

Cross-int. 184. I ask you if you can make a twill in the manner you have described in your answers to my last few questions?

Ans. I can make a twill in the manner described in my answer to cross question 155.

Cross-int. 185. (Question repeated.)

Ans. I have no other answer to give.

Cross-int. 186. Do you refuse to answer my question, or is it because you are unable to answer?

Ans. The answer I have given is the correct answer. I know no other.

Cross-int. 187. Are you able to answer my last question?

Ans. I have answered it. The answer I have given is the correct answer.

Cross-int. 188. In your answers given to the cross-examination, is your knowledge of weaving exhausted, about making twills and different fabrics?

Ans. I believe not.

Cross-int. 189. Why, then, can't you answer my last questions which I have repeatedly put?

Ans. Because you have not described the manner of making the twill in those questions.

Cross-int. 190. I ask you to describe the manner of making a twill according to your own description. I don't think it my office to answer for you. If the same question was put to me as a witness I could very quickly answer it. Please say now if you can or will answer my question.

1174

Ans. I have answered your question, and given the description of making a twill in the answer aforesaid.

Cross-int. 191. Is that the best and only answer you can make to my question?

Ans. It is the best answer, because a correct one.

Cross-int. 192. Do you consider yourself an expert in weaving?

Ans. I was so considered twenty years ago.

Cross-int. 193. I ask the question whether you consider yourself an expert in weaving, not other people?

Ans. Although not having been engaged in weaving professionally for more than fifteen years, I yet understand some of the principles of weaving.

Cross-int. 194. My question is, do you consider yourself an expert in weaving?

Ans. The best answer I can give to that question are my two preceding answers.

Cross-int. 195. (Question repeated.)

Ans. The answer I have given is the only one I have to give.

Cross-int. 196. Did you ever consider yourself an expert in weaving?

Ans. Yes.

Cross-int. 197. When; how long since?

Ans. Twenty years ago.

Cross-int. 198. Do you consider yourself so now, at the present time?

Ans. I have already answered that question.

Cross-int. 199. Please answer it again.

Ans. I answer it in my answers to cross-interrogatories 192 and 193.

Cross-int. 200. Have you forgot anything about weaving since you considered yourself an expert, twenty years ago?

Ans. I believe I can make all the goods I then made, though not as

rapidly as at that time, and therefore it would take me a longer time to produce them.

Cross-int. 201. Do you consider yourself an expert now, as you did twenty years ago?

1175 Ans. I want to understand your meaning of the term expert before I answer.

Cross-int. 202. My meaning of the term expert is for a weaver to fully understand his business as a weaver; when a fabric is put in his hands to make, he knows how to fix up his loom, to draw in his warp-threads, to work it when it is done, to have a competent knowledge of his loom, the size, and make, and dimensions of the component parts of such loom, for making such fabrics; and if he saw a fabric which he had never made, or seen made, he could tell in what manner it could be made, and go about it to make it.

Ans. I do not of necessity understand the weaving business in all its ramifications as well now as I did twenty years ago, not having been engaged in the business, as before stated, for more than fifteen years; but with reflection and time I could produce any of the fabrics that I manufactured twenty years ago.

Cross-int. 203. I speak now of the goods you did manufacture twenty years ago. Do you understand fully, according to my description of an expert, that you are now an expert in that branch of the business?

Ans. My last answer answers that question.

Cross-int. 204. What part of it have you forgot since twenty years ago?

Ans. I did not say I had forgotten any part.

Cross-int. 205. How then can you say that you are not as good an expert as you were twenty years ago, if you have forgotten nothing?

Ans. I have not said that I was not as good an expert as I was twenty years ago.

Cross int. 206. Are you as good an expert as you were twenty years ago? Please answer yes or no.

Ans. There are some things in your definition of an expert that I doubtless could not do now as readily as twenty years ago.

Cross-int. 207. Please give me your definition as an expert, when you considered yourself one twenty years ago.

Ans. Being able to produce the following fabrics: shoe-webbing, not elastic goring; suspender-webbing, elastic and not elastic; and most of the other small ware fabrics then known as manufactured with treddles and shafts.

1176 Cross-int. 208. Are you, then, an expert in the description of the goods that has been treated upon in your direct and cross examination?

Ans. If you mean by that, could I manufacture them, my answer is yes.

Cross-int. 209. I do not mean by that, could you manufacture them, but are you an expert on them?

Ans. I am expert enough to make them.

Cross-int. 210. What kind of elastic webbing did you see when in Boston at M'r King's store?

Ans. A small sample of elastic goring with the elastic threads covered by the filling and divided by the warp.

Cross-int. 211. Is that the only piece you saw there?

Ans. It was.

Cross-int. 212. How large a piece was it?

Ans. As far as my recollection goes, it was about four inches long, and I think about five inches wide.

Cross-int. 213. Did you ever measure the width of it?

Ans. I did not.

Cross-int. 214. Can you swear if it was over four inches wide?

Ans. I believe it was.

Cross-int. 215. What kind of a selvedge had it?

Ans. A rubber selvedge, covered with the weft.

Cross-int. 216. You say you made some like it, in your cross-examination.

Ans. I did.

Cross-int. 217. Where did you make it?

Ans. At New Brunswick, New Jersey.

Cross-int. 218. Did you make any for M'r King?

Ans. I did not.

Cross-int. 219. How came you to leave Boston and go to New Brunswick, and at whose request did you go?

Ans. My health was feeble at that time, and was advised to seek a more southern latitude and relinquish short-hand writing, for a time at least. I was also informed that M'r Day desired to engage some one to take charge of his weaving establishment. I communicated with M'r Day, and he engaged me to take charge of his place.

1177 Cross-int. 220. How many looms had M'r Day in his factory when you went to take charge of them?

Ans. I could not answer definitely, but think eight or ten.

Cross-int. 221. Did not M'r Day have twelve looms made all at one time, or soon after one another?

Ans. Not to my knowledge.

Cross-int. 222. What kind of looms were they; all for making suspenders?

Ans. All but one, I believe, and that one they had been trying to make this elastic goring. Another one was subsequently altered to make a round fabric covered with cotton and filled with elastic for the ends of suspenders, which alteration I made.

Cross-int. 223. Where was the cotton threads, warp and filling, bought while you were at M'r Day's factory? Of whom were they bought, I mean?

Ans. I do not know. M'r Rollo, the bookkeeper, attended to that.

Cross int. 224. About what counts or numbers of cotton were used in making suspenders?

Ans. I do not now remember.

Cross int. 225. Can't you give a near guess at the numbers of cotton thread when you see it? Can't you tell 20's from 30's, and 30's from 40's when you see it?

Ans. I do not know the relative grades.

Cross-int. 226. Was it fine or coarse?

Ans. Rather fine, I think.

Cross-int. 227. Are you not in the shoe trade now?

Ans. No.

Cross-int. 228. Have you not been?

Ans. Yes.

Cross-int. 229. When you was in the shoe trade a few years ago, did you not use linen and cotton thread in your sewing-machines?

Ans. They were used in our manufactory.

Cross-int. 230. Don't you know about the size of No. 20 sewing cotton?

Ans. I could not distinguish it, if put before me now, to know that it was No. 20's or 24's.

1178 Cross-int. 231. Could you tell No. 20's from No. 30's?

Ans. I am not sure that I could, but believe the 30's are finer than 20's.

Cross-int. 232. Will you please tell me how you can swear so positively about different fabrics, which have been described and shown to you, when you seem to be so ignorant about the counts and numbers of materials that go to compose a fabric?

Ans. Because the modus operandi of producing a fabric is different from the material of which that fabric is made.

Cross-int. 233. How is it that you can so fully describe a fabric shown to you, when you have been unable to describe the modus operandi of the very goods you have said you have made in Halifax, England?

Ans. I have described the modus operandi of the goods I made in England.

Cross-int. 234. Is that last answer as true as any other testimony you have given yesterday and to-day?

Ans. All the testimony I have given yesterday and to-day is true, to the best of my knowledge and belief.

Cross-int. 235. Will you swear that it is true, to your own personal knowledge, the testimony you have given yesterday and to-day?

Ans. The testimony is true.

Cross-int. 236. I ask you to your own knowledge of facts?

Ans. I have not answered by any other person's knowledge of facts.

Cross-int. 237. If you have not answered to other people's knowledge, to whose knowledge have you answered?

Ans. To my own.

Cross-int. 238. In the rubber thread used at M'r Day's factory in making suspenders, &c., was it not the same kind and size of thread with which he was making his corrugated goods?

Ans. I think not, but am not sure. M'r Helm can answer that question better than I.

(The witness desires to correct his answer as to his coming to this country, and says:) The year should be 1848, instead of 1847, and consequently the time I went to Boston was 1848, and not 1847.

1179 Direct examination resumed by M'r Dean, as questions omitted by inadvertence on the direct examination:

(M'r Smith objects to said statement being put on the record.)

Int. 239. Did M'r Day, while you were in his employ, have in his possession a piece of imported web, for shoe goring?

(Question objected to as not in the di ect.)

Ans. I believe he had.

Int. 240. Did he have it when you first went into his employ?

(Question objected to for same reason.)

Ans. I believe he had; and further stated that that was one of the elastic articles he would like me to make.

Int. 241. How were the rubber cords in that specimen covered?

(Objected to as leading, and that there is no account of such webbing in M'r Day's hand in the direct examination.)

Ans. They were covered with the weft.

Int. 242. How were you employed by M'r King, in his manufactory or in his store?

Ans. In his manufactory.

Int. 243. What was the article of shoe webbing you made in Halifax, England?

Ans. It was usually a dark fabric, composed of cotton and worsted, and was used to make the upper part of shoes with—about the same width as suspender webbing.

Cross-examination resumed de bene esse, M'r Smith reserving the right to object:

Cross-int. 244. In that piece of elastic shoe goring which you say you saw in the hands of M'r Day, when you first went there to work for him, what was the color of the back part of the fabric?

Ans. The samples which I first saw, he showed me in New York. He had some samples, black backs, and some white backs.

Cross-int. 245. Was not there in those samples you have just mentioned, composed of warp threads running longitudinally with the rubber threads?

Ans. One sample was, the other was not.

Cross-int. 246. Which of the samples was it?

1180 Ans. One of the samples with the white back had the warp threads running longitudinally with the rubber. He had also a black back of a similar character and one with the weft only covering the rubber on both sides.

S. L. JOHNSON.

Subscribed and sworn to before me this 5th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of John Helm, recalled.

Direct examination resumed by M'r Dean, of counsel for respondents:

Int. 15. How long is it since you have known native or pure rubber to have been prepared in strands for the manufacture of woven elastic webs?

Ans. I prepared or cut native rubber for the manufacture of suspenders, or it may have been shoe goring, in 1848, or it may have been before that, I am not positive.

Int. 16. When did its use for that purpose go out of date?

(Question objected to.)

Ans. I think about 1847 or 1848, but cannot be positive as to the date.

Cross-examination by M'r Smith:

Cross-int. 17. Please state where you procured this Exhibit Helm, J. G., j'r.

Ans. I removed from the factory of Horace H. Day a number of rolls that were made there, which were not considered marketable, and this is a piece that I cut from one of the rolls.

Cross-int. 18. When did you remove those rolls from Horace H. Day's factory?

Ans. I can't give the exact date, but I know that they are the same from the fact that these rolls that were not marketable, we re-

1181 moved from the weaving-room into a room that we kept for a store-room for all refuse goods.

Cross int. 19. How long did those rolls remain in that room that you removed them to?

Ans. I think until the year 1852.

Cross-int. 20. Where did you remove them to from there?

Ans. I took them to my house.

Cross-int. 21. How long did they remain at your house?

Ans. There is one or two rolls there now, I believe. This piece was cut from one of them.

Cross-int. 22. When did you cut this sample, marked Exhibit Helm, J. G., j'r, from one of them?

Ans. I think somewhere about a year ago.

Cross-int. 23. What was the reason you cut a piece off about a year ago?

Ans. There was a gentleman called upon me at New Brunswick and questioned me as to the manufacture of woven elastic goods. I stated to him that we had, in Horace H. Day's manufactory, manufactured woven goods, and that I had some of them on hand at that time. He asked me if I had any objection to giving him a piece. I cut off a small piece and cut a longitudinal piece from it so I would know it again.

Cross-int. 24. Please state that gentleman's name, and where he came from?

Ans. That is more than I can do. He came from New York, I believe.

Cross-int. 25. Can you describe his appearance?

Ans. I don't think I can.

Cross-int. 26. Had he a black moustache?

Ans. I don't remember. My impression is he had not.

Cross int. 27. Did he say for what purpose he wanted it for?

Ans. I think he said there was a dispute between parties relative to the manufacture of some kind of elastic goods.

Cross-int. 28. Did he state anything further than that?

Ans. I don't think he did. I did not know who the parties were, and did not know anything about it till yesterday or to-day.

Cross-int. 29. Who called upon you to testify here in this case?

1182 Ans. I received a note from some one. I think it signed Dodd, by some one else—requesting me to be down here yesterday.

Cross-int. 30. Hadn't that note a printed heading on it that you received?

Ans. I think it had.

Cross-int. 31. Didn't it come from Chambers street, New York? In the printed part was not Sawyer & Judson upon it, such a number, Chambers street, New York, and signed M. W. Dodd at the bottom?

Ans. I think Sawyer & Judson's name was printed upon it, but the initials of M'r Dodd I don't remember. I could see Dodd, by some other person.

Cross-int. 32. Please state the contents of that letter as near as you can recollect them.

Ans. It was requesting my presence at M'r George Gifford's office, at 10 o'clock, on the 4th inst., and my expenses would be paid.

Cross-int. 33. Was there any money inclosed in the letter?

Ans. There was not.

Cross-int. 34. Was that all that was said in the letter?

Ans. There was something said about their having requested M'r Johnson to attend at the same time.

Cross-int. 35. Was that all that was in the letter?

Ans. I believe it was, sir.

Cross-int. 36. Was that the first and only correspondence or conversation you have had with any one about giving testimony in this case?

Ans. It is. I don't remember anything else.

Cross-int. 37. What induced you to bring this Exhibit Helm to this office?

Ans. I never did bring it here.

Cross-int. 38. Do you know who did bring it here?

Ans. I do not.

Cross-int. 39. How then do you know it is the same fabric that you cut off from that roll twelve months ago?

Ans. I know from its general appearance, and the piece that is cut out of it. That I cut out myself a long while ago.

Cross-int. 40. At whose request did you cut that hole out of the fabric twelve months ago?

1183 Ans. I think I cut it out without anybody's request. I did it so that I would know the piece again.

Cross-int. 41. You never saw this Exhibit Helm since twelve months, till yesterday?

Ans. About that time.

Cross-int. 42. Did you often see this roll of webbing that this piece was cut from, since 1852, while at your house?

Ans. I frequently saw the roll.

Cross-int. 43. You state in your direct examination that you have known vulcanized rubber to continue elastic for sixteen years. Please state what condition that rubber was in. Was it in sheets or cut in strands?

Ans. I have some in my possession at home that is cut in strands, but still rolled as it came from the machine.

Cross-int. 44. I am asking you how that vulcanized rubber that you said continued elastic for sixteen years, in what state it was in; whether in sheets or cut in strands?

Ans. I thought I answered it was cut in strands.

Cross-int. 45. Haven't you testified in affidavit before, about Day's looms and the kinds of goods he made, in suits of Charles Goodyear and William Judson against Horace H. Day, in 1858?

Ans. I may have done, but don't recollect the particulars.

Cross-int. 46. Did you not deposit samples of fabrics made at the factory of Horace H. Day, in New Brunswick, New Jersey, in the years 1848 and 1849, and will you swear that any of those fabrics were like Exhibit Helm, J. G., j'r?

Ans. I do not remember depositing fabrics so described.

Cross-int. 47. Can you swear that you did not make deposits of fabrics when you made your affidavit in the suit of Goodyear and Judson against Day, in 1858?

Ans. I have no recollection of making any such deposits.

Cross-int. 48. Have you any recollection of giving evidence and making affidavits to be used in the suits just above mentioned?

Ans. I don't recollect it now.

Cross-int. 49. Do you recollect of making another affidavit in the same suit, in 1858, or the beginning of 1860?

1184 (Objected to as not opened by the direct examination and immaterial.)

Ans. I do not recollect it.

Cross-int. 50. Do you recollect making an affidavit in those suits and attaching to your deposition the price you gave Horace H. Day for those looms, also a note that M'r Day gave you to his head man at the factory to deliver those looms to you?

(Same objection.)

Ans. No, sir; I do not.

Cross int. 51. What became of those looms at M'r Day's factory?

(Same objection.)

Ans. They were sold to Hotchkiss & Merriman; I think that was the name.

Cross-int. 52. Did M'r Day sell them to Hotchkiss & Merriman?

(Same objection.)

Ans. No, sir.

Cross-int. 53. Who did?

(Same objection.)

Ans. I sold them to Hotchkiss & Merriman.

Cross-int. 54. How many did you sell them?

(Same objection.)

Ans. I don't remember how many there were of them.

Cross-int. 55. Who received the money for them?

(Same objection.)

Ans. I received a note from them for them.

Cross-int. 56. What did you do with that note?

(Same objection.)

Ans. I indorsed it and passed it to some person that M'r Day wished to have it.

Cross int. 57. Did you consider that money your own or Horace H. Day's?

(Same objection.)

Ans. I considered it my own.

Cross-int. 58. How came you to swear then, in those suits of Judson against Day, that you bought those looms of Horace H. Day?

(Same objection.)

Ans. If I ever did swear to that it was because I had bought them of him.

1185 Cross int. 59. Did you not swear in those affidavits before mentioned, in those suits, that all Day's looms were suspender looms to make suspenders?

(Same objection)

Ans. I don't recollect that I did; I have no recollection of the affidavits at all.

Cross-int. 60. Had you anything to do with the weaving department while you were with Horace H. Day, in New Brunswick?

(Same objection.)

Ans. I had nothing to do with the weaving department, other than to pass in and out of the room, and prepare the rubber threads for them.

Cross-int. 61. Who were the buyers of the cotton materials for making suspenders?

(Same obection.)

Ans. M'r Rollo.

Cross-int. 62. Did you cut the same size of thread for making suspenders as you did for making the corrugated or shirred goods?

(Same objection.)

Ans. We did; but we had two or three machines which we used for cutting different sized threads.

Cross-int. 63. What size of threads did your finest machine cut?

(Same objection.)

Ans. My impression is that it was nine to the inch.

Cross-int. 64. Were they cut square or flat?

(Same objection.)

Ans. Both; some square and some flat; for the weaving, we tried to have them square.

Cross-int. 65. When you sold those looms to Hotchkiss & Merriman, did not you reserve two of them for your own use?

(Same objection.)

Ans. I think the two iron looms were reserved.

Cross-int. 66. What did you do with those two iron looms?

(Same objection.)

Ans. I think they were finally sold for old iron.

Cross-int. 67. Did you make any goods upon them?

(Same objection.)

1186 Ans. I do not think we did.

Cross-int. 68. Where did you keep the rolls of those webs at your house?

(Same objection.)

Ans. There were some dozen in the cellar; and there were some over the kitchen or wood-shed, as we called it.

Cross-int. 69. I suppose that you cut all your own threads of vulcanized rubber that you used in the factory in New Jersey?

Ans. Yes, sir.

Direct examination resumed:

Int. 70. How many to the inch were the threads in Exhibit Helm?

(Objected to as leading.)

Ans. I could not say, but I should think about nine.

Int. 71. Have you said exhibit in your hand? And if so, state whether the rubber strands in said exhibit were cut upon any machine in Horace H. Day's factory.

(Objected to as the witness has already sworn that all the vulcanized rubber strands used in that factory were cut in that factory.)

Ans. My impression is now that these threads were cut upon a little machine that we got for cutting pure rubber, which had an upright shaft on which was a gang of circular knives running at a high speed, which knives cut into the edge of a disc of rubber, and as the rubber revolved there was another circular knife that revolved in front of the upright shaft which cut a ribbon from the disc as it passed around it; that ribbon dropped into a pail of water separating into strands where the incisions made by the small knives that ran against the edge of the disc had perforated them.

(Question and answer objected to as not being called out in the cross-examination.)

Int. 72. Have you said exhibit in your hand? And, if yes, say in how many strands to the inch it was cut.

Ans. I cannot say, not remembering the distance that the knives were apart in the little upright shaft. When I spoke about our cutting machines and said that I thought our finest machine cut about nine to the inch, I had lost sight of or forgotten the little machine that we cut fine threads with.

1187 Cross-examination resumed:

Cross-int. 73. Was not that small machine you say you had for cutting native rubber with the usual kind of machine for cutting native rubber that was generally used by other people?

Ans. I know of no other machine than that little machine, and the other machines that we had in the factory.

JOHN HELM.

Subscribed and sworn to before me this 5th April, 1870.
JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to April 7, 1870, at 10 a. m.

NEW YORK, *April* 7, 1870—10 a. m.

Present, M'r Dean, of counsel for respondents.

The witness, John Helm, desires to make some explanation as to his deposition, which is as follows:

I wish to state that to one of the cross-questions I said that there were knives, according to my then recollection, that cut nine threads to the inch. I think this was what I stated. Upon my way home, thinking of the matter, I felt confident that I had made a mistake. Upon my arrival at home, knowing that I had some of the threads that were cut by our knives, I found them, and they were sixteen to the inch; and I believe that we had a machine that cut them finer than that. I have a sample of a piece cut by one of our machines, which shows just how it was cut. I now produce that sample, which is marked Exhibit Helm No. 2. This shows the width of the knives of one of our machines.

The rubber is spread upon the muslin or fabric before being vulcanized, and after it is vulcanized it is cut, before weaving, through the rubber, but not through the muslin, on which it is spread, as is shown by the sample.

I said, also, in my deposition, that I thought the rubber thread in the Exhibit marked Helm No. 1 was composed of rubber, sulphur, and magnesia, and vulcanized, but now I believe it was pure rubber, as I
1188 have tested it by masticating the same between my teeth, since I made that statement, and find that it becomes a homogeneous, compact mass, which vulcanized rubber will not do.

As soon as I discovered these errors in my deposition, I came down to New York, and found M'r Smith, the complainant, and said to him what I wished to correct, and he refused to let me correct; said it should not be done, and he would not allow any correction; that I had sworn to what I had said, and it should remain sworn. The fact that I had made the mistake troubled me much, and I did not sleep all night, and when he said I should not alter it, it troubled me considerably.

I mentioned it to M'r Dean, and he told me to come down this morning, when the examiner would be present, and when I would have a chance to make the alteration.

I then notified M'r Smith that I should come this morning before the examiner to have it corrected; that it must be done in some way, as I did not wish my mistakes to remain upon the record without the correction.

JOHN HELM.

Subscribed and sworn to before me this 7th day of April, 1870.
JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of Thomas J. Martin.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Thomas J. Martin; I am 38 years of age; I am a dyer; I reside at 184 Richmond street, Philadelphia.

Int. 2. Do you know Ferdinand Doebley, of Philadelphia?

Ans. I do; he carries on the business of manufacturing reeds and heddles; I know him intimately; our offices are together, in the same building.

Int. 3. Do you know William Smith, the complainant in these cases?

1189 Ans. I do; I met him several times in our office last summer, and at other places.

Int. 4. Did he know you?

Ans. I presume so; we were introduced at our first meeting; he came into our office to see M'r Doebley; he always recognized me.

Int 5. Did you on any occasion go with M'r Doebley, when he called on M'r Smith, the complainant?

Ans. I did once; I did once by invitation of M'r Doebley. The facts were, M'r Smith had left a note on my desk for M'r Doebley, wishing to see M'r Doebley at his boarding house; and when M'r Doebley came in and I had got through my business, M'r Doebley asked me to call on M'r Smith—to go with him. He merely asked me to call with him, only so far that we were always together after business hours for a while.

Int. 6. What time of the day was it, and where did you find M'r Smith?

Ans. The time was approaching three o'clock; I can't say exactly. We found M'r Smith at his boarding house on Walnut street, between 3d and 4th.

Int. 7. What occurred there?

Ans. M'r Smith invited us into his bed-room; entered into conversation with M'r Doebley about some webbing; I did not pay any attention to that, as I was not interested in that; all I know about it is, that it was concerning webbing.

Int. 8. Do you remember anything about what was said?

Ans. I do not, M'r Dean; as it was something that did not concern me, I paid no attention to it.

Int. 9. How long did you remain there, and what occurred when you left?

Ans. We stayed there, I believe, one hour; it was very warm; I got tired and suggested that we should go; I got up first and intimated that I would like to go; M'r Doebley got up; M'r Smith and M'r Doebley were talking all the time; I was ahead, and kept so down to the landing.

Int. 10. Did you take any part in the conversation whatever?

Ans. None that I have the slightest recollection whatever; none as far as business was concerned.

1190 Int. 11. Was M'r Smith's attention called to you in any way?

Ans. Yes; it was by M'r Doebley when we first went into the boarding house. M'r Doebley called his attention to me, and M'r Smith nodded and recognized me, as one man would another whom he had been introduced to.

Int. 12. Did you assent to or dissent from, or were you called upon to do so, with reference to any question or proposition while there?

Ans. No.

Int. 13. Did M'r Doebley say anything about being an important witness, that you heard?

Ans. No, sir.

Int. 14. Was there anything said by M'r Smith on that occasion with reference to anything like this: "You must go and prove it, and if you can do that, that will be the end of the matter"?

Ans. There was not; nothing like it.

Int. 15. Did M'r Smith say to M'r Doebley that he (Smith) was a wrong person for a man to come to and tell him how much he could injure him, or words to that effect?

Ans. Nothing of the kind; the conversation was of the most friendly character; nothing to indicate any unpleasantness on either side.

Int. 16. Was there anything said about money, or pay for services of M'r Doebley?

Ans. None that I heard of.

THOMAS J. MARTIN.

Subscribed and sworn to before me this 7th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1191 *Deposition of Thomas Cory.*

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, and occupation and residence?

Ans. My name is Thomas Cory. I am 72 years old; by trade, coach-lace weaver. I live at Canoga, Senaca County, N. Y.

Int. 2. How long were you engaged in the business of coach-lace weaving?

Ans. I think the last time I commenced in 1837, and I think I sold out in 1854. The first time I was in business in 1824. I have been more or less in business for forty years.

Int. 3. While you carried on the business of coach-lace weaving did you weave any other fabrics?

Ans. I used to make fringes; they generally go with the coach-lace business. I also made patent tufts for cushions; also ball tufts for coaches; also cord for saddle blankets.

Int. 4. Where did you carry on this business?

Ans. In Newark, Washington street; that was where I was last. I was there, I think, eleven years. Before that time I was in Market street, and in the Hope Building on Canal street. I was first in a garret, then in the Hope building, and then on Market street, and last on Washington street, all in Newark.

Int. 5. Did you at any time make any elastic web for shoe-gores?

(April 8th. Objected to as leading.)

Ans. I did not know it by that name. M'r Banister came to me in 1847 and brought me a small piece of elastic web. He said he supposed it came from France; he had seen French shoes with that kind of elastic in them. I went to work and got up some elastic webbing of which these samples, marked Exhibit Cory, J. G., j'r, are a part. These samples are the poorest samples I got up most, but I happened to find the silk one in an old coat pocket, the other in the house somewhere.

Int. 6. How was the sample woven that M'r Banister showed you?

Ans. It was woven a "twill figure"; it took four treddles to
1192 weave it; I made a piece like it; it was too thick. I then got some up like this Exhibit Cory, J. G., j'r, which was the simplest weaving I ever done, or as simple.

Int. 7. How did you manage, in making said samples of elastic webbing, to keep your selvedge even and straight?

Ans. I kept them even and straight by wires which I called "side bars," or "temples"; we thought of getting a patent, and got Stephen Dodd, who used to be mayor of the city, to make the drawings for that

purpose, which I have had in my possession ever since, and have it here now, which is marked Exhibit Cory, J. G., j'r, No. 2. In said exhibit the wires or bars marked "a, a," exhibit the "side bars" or "temples" of which I have spoken.

Int. 8. How did said "side bars" or "temples" preserve the straightness of the selvedge?

Ans. The "side bars" or "temples" were always equally distant from each other, according to the width of the cloth. They were placed in the reed, and the reed kept them in their places. The filling went around the outer selvedge cord and the "side bar" at the same time, so that when the "batten" beat up, it would drive the filling along the "side bar" the same distance that it would drive the filling in the center, otherwise it would catch on the rubber selvedge, and it could not be driven as far as it would in the center. It would grow narrower, but the "side bars" kept it even. As the work is drawn off, the "side bars" slip out, but remain in the reed long enough for the work to go on. I was in the neighborhood of a month finding out how to make this selvedge.

Int. 9. What covers the rubber warp thread?

Ans. The filling covers it, that's all.

Int. 10. Did the filling go over some of the rubber and under others?

(April 8th. Objected to as leading.)

Ans. No; the rubber is covered with the filling. The filling goes across one side of all the warps, then around the selvedge cord, and then across the other side of all the rubber warps, and so on, and is held down to the rubber by what we call "binders"; that is the name we give them. We use binders in lace, and that is the reason why I under-
1193 stood how to use them in making this. In lace we have extra binding-warps for that purpose.

Int. 11. Where was your place of business at the time you made said samples like said Exhibit Cory, J. G., j'r, No. 2?

Ans. In Washington street, Newark.

Int. 12. How long, all told, were you engaged in making that kind of a fabric?

Ans. I should think in the neighborhood of a month. I made a good many samples before I got it right; the trouble was in getting the edges; after I got them, I was all right. The trouble after that was in getting the material. M'r Banister told me that he went to Goodyear & Day, and they would not give him any thread, for it would interfere with their "shirred" goods; furthermore, he said that they would put their "shirred" goods down so low that we could not go on; that somewhat "backened" us altogether, although we went to Yorkville, N. Y., to see about getting native rubber, but I thought that native rubber would not answer against "shirred" goods. M'r Banister did buy a machine for cutting rubber, but found that the machine was not suitable—the machine might have been suitable, but we could not get the right rubber.

Int. 13. How many treddles did you use in making said samples of elastic webbing?

Ans. The first sample, like the French piece, I used four treddles, but like exhibits, I only used two.

Int. 14. What means have you of fixing the time when you made these Exhibits Cory, J. G., j'r?

Ans. The year I got it up, I was made an officer of the Rechabite order. I was an officer about six months. I was chief ruler first, and then past chief ruler. Was first elected in warm weather in 1847, and the reason I did not want to be bothered with the webbing was at that time because it interfered with my duties as an officer. I wanted to work

on it nights, and I could not do it and attend to the duties of my office in the order. I would work on it a little and then take out the bars, so that the two men I had there could not see how it worked. I remember that I was chosen an officer in the Rechabite order in 1847; I recollect this distinctly, and that it was during that time that I made those samples.

1194 Int. 15. Where was M'r Banister's place of business at that time?

Ans. In Market street, nearly opposite the library, in Newark.

THOMAS CORY.

Subscribed and sworn to before me this 7th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of Isaac Banister.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Isaac Banister; my age is 67 next September; my residence is Newark, N. J.; my business is that of a shoe manufacturer. Have not been engaged in the business for the past three or four years.

Int. 2. Where was your place of business in Newark, in the latter part of 1847 and 1848?

Ans. I was in Market street, on the south side of the street. In the latter part of 1847, and during 1848, I started business there; I cannot tell the month.

Int. 3. During the time you were there, was anything done by you with reference to making elastic web for shoe-gores, and, if yes, what?

Ans. Yes; I made an attempt to get up web for shoes. I called to my aid M'r Thomas Cory, who was a coach-lace maker.

Int. 4. When was this?

Ans. It was during the time that I first specified, in Market street; it was during my stay there; my impression was that it was in 1848; it might have been in 1847.

Int. 5. What led you to make the attempt?

Ans. I had seen the imported goods and had worked on it, but I did not like the shirred or corrugated goods as well as the English and French, which I had worked; the latter being woven were porous,

1195 and did not sweat the foot; and another reason was, I could not get a supply of the silk woven goods, and they were very expensive, and I thought I could get up something cheaper.

Int. 6. What was accomplished by M'r Cory and yourself?

Ans. I was satisfied, from the experiments that were made, that we could, by a little experience, make an article that would answer the purpose and be satisfactory. I obtained rubber of M'r Dunham, who was then manufacturing India-rubber goods. I went to three different places to get rubber, but the rubber companies stopped Dunham, and I could not obtain it of any others to my satisfaction, and that is the reason I abandoned all further efforts; there were samples made, and I am as positive as I can be of anything that those samples, Exhibit Cory, J. G., jr., were made at that time by M'r Cory. I also think I put some into shoes, but to no great extent.

Int. 7. How long before making said samples, in your judgment, had you seen any imported webbing?

Ans. The year before, at any rate.

Int. 8. Do you remember Exhibit Cory, J. G., jr., No. 2?

Ans. I do remember Exhibit No. 2; it was made by Squire Stephen Dodd. It was made for the purpose of obtaining a patent for the loom, supposing the goods were not patentable, and was the reason I thought we would get up a loom, and have it patented.

Int. 9. What facts, if any, led you to suppose the goods were not patentable?

Ans. They were already in the market, both in web and imported shoes; the web I had used I bought it here in New York, therefore we concluded to get a patent on the bars, and we abandoned that on the account of the difficulty of getting the rubber.

I. BANISTER.

Subscribed and sworn to before me this 7th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to April 8th, 1870, at 12 m.

1196 NEW YORK, *April* 8, 1870—12 m.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant, in person.

Complainant objects to any explanation given by John Helm after giving his testimony, cross-examined, re-examined direct, signing the deposition and going home, and then coming back, saying how miserable he had been, swearing to greater absurdities than he had done before; that complainant would have gone much further in his cross-examination had he not considered his testimony confuted.

And complainant requests defendants to produce the said John Helm for cross-examination by complainant, or the additional testimony which he has put in to be stricken out of the record.

Deposition of Thomas Cory, recalled.

Cross-examination by M'r Smith:

Cross-int. 16. When were you first called upon with regard to giving testimony in these suits?

Ans. Last Monday, by the gentleman who just went out—E. T. Sawyer.

Cross-int. 17. Where was you at the time he called upon you?

Ans. I was in Canoga reserve, as they call it, in Cayuga County.

Cross-int. 18. What did he say to you when he called upon you?

Ans I don't remember the whole of what he said; he asked me if my name was Thomas Cory; I told him it was, and he says, says he, that my nephew told him where I lived, and he called on me, he said, for he understood that I had made India-rubber web; there wasn't anything said of any consequence, only he was satisfied that I was the man he came after; there was something else said, but I don't recollect what it was.

Cross-int. 19. What was said between you about money matters, and what amount of money did you receive from him?

Ans. I didn't speak to him about money. I had no call to do
1197 that. When I got to the Falls I told him that I wasn't going to pay my expense; he said that was all right. He has given me money to pay my expenses back; to pay my expenses here; and I gave him a receipt. That was all.

Cross-int. 20. Please state how much money you received from him.

Ans. Well, I have received $30; he gave me that just now; that is, including my passage money and all; in the whole, $30.

Cross-int. 21. Has M'r Sawyer, or any one else, wrote anything out for you, for you to read, to refresh your memory?

Ans. No, sir.

Cross-int. 22. When did you leave Newark and go to Canoga?

Ans. I left twice and went there, but the last time I went there was three years this spring, I believe; I am pretty sure.

Cross-int. 23. Where have been these two exhibits since 1847, when you said you made them, until the present time?

Ans. They have been in my possession.

Cross-int. 24. Where is your possession?

Ans. Why, one of them I found in an old coat-pocket, that had been there from the time I made the work, probably.

Cross-int. 25. Which of the exhibits that you put in evidence yesterday did you find in your coat-pocket?

Ans. The silk one.

Cross-int. 26. Had you been in the habit of wearing that coat since 1847?

Ans. No, sir.

Cross-int. 27. Was it an old coat in 1847?

Ans. No, sir, it was made at that time; it is an old coat now, though.

Cross-int. 28. When was that coat made?

Ans. I don't know.

Cross-int. 29. Was it made ten years ago?

Ans. I don't know when it was made. I bought it out of the shop; it might have been made forty years ago; it was new when I got it.

Cross-int. 30. When and where did you buy that coat—that old coat?

1198 Ans. I bought it in Newark. I don't know when I bought it.

Cross-int. 31. Have you bought it ten years ago?

Ans. No, sir; I don't wear a coat as long as that.

Cross-int. 32 Have you bought it five years ago?

Ans. I don't know whether I bought it five years.

Cross-int. 33. How many times did you see those exhibits from 1847, when you made them, till the time you found them in your old coat?

Ans. I couldn't tell. I have had them oftentimes and shown them oftentimes.

Cross-int. 34. Whom have you shown them to?

Ans. I couldn't say; I have shown them to so many.

Cross-int. 35. If you have shown them to so many, can't you recollect one that you have shown them to during these years?

Ans. Yes; I have shown them here.

Cross-int. 36. When?

Ans. Yesterday, they have been shown here, and the day before.

Cross-int. 37. Any time before then?

Ans. They were shown here, I believe, Monday, wasn't they?

Cross-int. 38. Did you show them to any one previous to Monday?

Ans. Yes. I suppose I have shown them to a hundred different people, both in Newark and otherwheres, during the time. I have shown them to M'r Banister a good while ago.

Cross-int. 39. What other place did you show them besides here and in Newark?

Ans. I don't know of any other place; I haven't been much about.

Cross-int. 40. Did you ever hear speak of Dodd & Wakeman making them in Plain street, Newark?

Ans. Yes, sir. I never knew the man by name. I knew there was a factory being established.

Cross-int. 41. Did you hear of them making elastic shoe-goring?

Ans. Not by that name, I didn't. I heard they were going to weave some rubber cloth or webbing—an old gentleman told me. I asked him if they had any chance of a job there for work. He asked me if I knowed how to make warps.

1199 Cross-int. 42. About what year did that take place?

Ans. The year—it was before they had wove any—they were about putting up looms; they had hired a building of M'r Ely, they said, for three years. I don't know nothing about the truth of it. He said he didn't know, but would see. I was in the factory once, and I didn't stop long. I saw the same old gentleman again and showed him one of those patterns, and he pronounced it very good, except it was coarse—it looked coarse.

Cross-int. 43. When you were in that factory, how many looms did you see?

Ans. I don't remember seeing many looms. I remember seeing them at work at one, trying to get it in operation. I suppose it would weave three or four pieces. I should judge it would, such a narrow slip.

Cross-int. 44. What made you go to that factory?

Ans. M'r Ely said that I could get a job of work there—he was acquainted with the old man, and so on; that is what sent me there to see when they wanted me. The old gentleman—I saw him in the street—he was going to dinner, I believe, at that time, when I saw him again. I showed him the pattern on the walk where I was, in the street, and he pronounced it good, only it was too coarse. They made a finer article. That is all, I think, that passed.

Cross-int. 45. In what year did that take place?

Ans. I can't remember.

Cross-int. 46. Was it before 1860?

Ans. It was some three years ago—maybe more; I am not sure.

Cross-int. 47. Were both these exhibits that you put on record yesterday, made in the year 1847?

Ans. Yes, sir.

Cross-int. 48. What were the counts in the reed that you made them in?

Ans. Well, my reeds ran from sixteen to nineteen for coach lace, and it was woven with coach-lace reeds—that I used for coach lace.

Cross-int. 49. What counts were the reeds you used in making your coach lace for the widest coach lace you made?

1200 Ans. From sixteen to nineteen. We don't go like like broad weavers in those things.

Cross-int. 50. What was the widest coach lace you made at Newark?

Ans. I couldn't tell to a fraction. We generally make them to order—from two inches to three inches—hardly ever went above three.

Cross-int. 51. Did you ever make at Newark a coach lace more than three inches wide?

Ans. Not very often. That is generally as wide as they mostly use—the general run.

Cross-int. 52. (Question repeated.)

Ans. Well, I might, but I don't remember; we hardly ever make them more than three inches wide. There might be sometimes an order to sell them.

Cross-int. 52*a*. [Question repeated.]

Ans. I couldn't say. I have made them more than three inches wide,

but I can't say whether I did at Newark. Three inches was the general rule.

Cross-int. 53. Where did you make it any wider than three inches, if you did not make it at Newark?

Ans. A great many people takes our seaming and pasting that we have for lace. Some people thinks that our seaming lace is what they call lace—some do, but we don't. Seaming lace is made from four to six inches wide, if that is what you want to find out. It is cut into three or four stripes.

Cross int. 54. How happened it that you, after being a coach-lace manufacturer, afterwards had to be applying for work as a weaver?

Ans. Because I had nothing to do.

Cross-int. 55. How many coach-lace looms had you in Newark in 1847?

Ans. I believe I had only three. That was all that I had at that time.

Cross-int. 56. When you made those samples, in 1847, of this shoe webbing, how did you enter the warp in the reed?

Ans. Every other dent.

Cross-int. 57. What do you mean by "every other dent"?

1201 Ans. That I didn't put the warp in every dent in the reed—that is what I meant—as weavers do other work.

Cross-int. 58. Where did you put it, then, if you didn't put it in every dent?

Ans. I left an open dent between, through the warp, for my binders; they couldn't bind it. It could be done but it wouldn't make that work right. What they call warp I call binders.

Cross int. 59. What counts of cotton did you use when you were making that shoe goring in 1847?

Ans. Such as I generally use in coach lace.

Cross-int. 60. How many binding warps did you put between each rubber cord?

Ans. I could tell easy enough by looking at the pattern. It is according to width; the pattern tells for itself.

Cross-int. 61. I ask you how many binding warps did you put between each rubber cord in them samples?

Ans. I should have to count them; there is two between each rubber.

Cross-int. 62. What counts of cotton did you use in making coach lace?

Ans. We generally vary in that; we use from 14's to 18's—as high as eighteen numbers. Sometimes we couldn't always get the size we wanted. We used those numbers generally.

Cross-int. 63. Was your cotton that you used in making those elastic gores double and twisted?

Ans. Some I used double and twisted. I think all double and twisted that I used at that time. I think I used silk in some of them, because it is strong. I wanted something strong.

Cross-int. 63*a*. How much did you make of the shoe goring in 1847?

Ans. I never kept count of how much I made.

Cross-int. 64. Did you ever sell any of it?

Ans. No, sir.

Cross-int. 65. What kind of rubber did you use in it?

Ans. I shall have to ask M'r Banister; he procured the rubber for me.

Cross-int. 66. In what shape was it when M'r Banister gave it to you—the India rubber?

1202 Ans. Cut into thread.

Cross-int. 67. How, or in what shape, was it made up when delivered to you?

Ans. It was wound in balls.

Cross-int. 68. How did you make your warp from the balls of the India rubber?

Ans. I made them a number of ways till I got them right to suit myself. I made them separately on spools, the same as we do lace; then I put on what we call a dead weight, and weighted them all alike. That is the way I made my warp, the last warp.

Cross-int. 69. Do you do anything to the fabric after it was made to make it even, and nice, and elastic?

Ans. No; I didn't do nothing to it after I wove it. I left it in the same state as you see it there.

Cross-int. 70. Did you take out a patent for making shoe goring at any time?

Ans. No; I made preparations for it, but couldn't get the rubber; had to quit.

Cross-int. 71. Was your specification and plan drawed out at the time this Exhibit Cory No. 2 was made?

Ans. Shortly after. After I succeeded in making it all right; in making the patterns that you see before you; then I applied and made the drawing. Stephen Dodd, he drew out the ; he's dead.

Cross-int. 72. How many years after was it when you applied to Stephen Dodd to make this drawing?

Ans. It was the same year that I got the patent up; in 1847.

Cross-int. 73. Did you ever make application to the Patent Office?

Ans. No, sir.

Cross-int. 74. What did you think you could claim as new to procure a patent?

Ans. The side bars, I call them, or temples. I hadn't placed no particular name, only I thought that side bars was the best name for it.

Cross-int. 75. lease state what the side bars were.

Ans. They were nothing more than knitting needles that I used, made stationary and passed into the reed on both edges of the web, as you will see in the drawing, letter AA and BB.

1203 Cross-int. 76. Was you not aware at the time of its being an old device?

Ans. No.

Cross-int. 77. Have you not, in other kinds of fabrics, used wires, or their equivalent, for the edges of fabrics?

Ans. Such as heavy fringes we have, for we wanted to keep the correct width; that has been done fifty years, I suppose; I have no doubt of it.

Cross-int. 78. Have you ever used, or seen them used, before 1847, in making ribbons—I mean wire or its equivalents, such as horse-hair or whalebone?

Ans. I never see wire nor whalebone used; have seen hair used.

Cros-int. 79. Who requested you to produce Exhibit Cory No. 2?

Ans. That was drawn by Stephen Dodd. There was a letter wrote to me by M'r Banister, I believe; I think it was M'r Banister wrote to me, but I don't think that is the piece there that I sent to him, but it is the same kind. I cut it in two and sent him half of it. M'r Banister wrote to me respecting Exhibit Cory No. 2, and I sent it in that way in a letter. It has been torn in two since; it was all in one piece.

Cross-int. 80. Will you produce the letter that M'r Banister sent to you?

Ans. I couldn't get the letter; I know nothing about where it went to. I got the letter, but I don't know anything about where the letter is that he sent me.

Cross-int. 81. Have you given said letter to any one since you received it?

Ans. No, sir.

Cross-int. 82. Will you not produce it?

Ans. I can't do that.

Cross-int. 83. What have you done with it?

Ans. I don't know what became of it; it has got lost somehow or another; maybe I used it in the backhouse, for anything I know.

Cross-int. 48. How long is it since you received it?

Ans. I don't recollect.

Cross-int. 85. Is it a month?

1204 Ans. Oh, yes.

Cross-int. 86. Is it six months?

Ans. I don't know; I can't recollect now what time.

Cross-int. 87. Have you nothing whereby you can fix the time, or near the time, you received said letter?

Ans. No.

Cross-int. 88. Was it before last Christmas?

Ans. I don't remember what time it was.

Cross-int. 89. If your memory is so vague that you cannot remember a few months, how is it that you can so well remember transactions in 1874?

(Objected to as impertinent, and an attempt to badger the witness.)

Ans. I can remember things that happened when I was five years old better than I could things that occurred three months ago.

Cross-int. 90. How many letters are you in the habit of receiving?

Ans. Well, I haven't received many letters for three or four years from anybody only my friends.

Cross-int. 91. What has become of and where is the other part of Exhibit Cory No. 2?

Ans. There is no other part of that missing, that I know of; that is all I ever had of it.

Cross-int. 92. Have you received more than one letter from M'r Banister on the subject of your exhibit, or the subject matter of these suits?

Ans. No, sir.

Cross-int. 93. When did you last see this exhibit before you sent it to M'r Banister?

(Exhibit Cory No. 2 shown witness.)

Ans. I had it in my drawer, where I could see it every little while.

Cross-int. 94. Is this, the said exhibit, in the same state as when you sent it to M'r Banister?

(Objected to, as already answered.)

Ans. I think it is; all the difference is that some pieces are
1205 pasted on to keep it together, where it was worn through—worn out, keeping it so long.

THOMAS CORY.

Subscribed and sworn to before me this 8th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Deposition of Isaac Banister, recalled.

Witness produced for cross-examination; M'r Smith, complainant, objecting to the testimony of said witness, as far as goes to prior knowledge, as incompetent, his name not appearing in any of the answers or amended answers to his bill of complaint.

Cross-examination, de bene esse, by M'r Smith:

Cross-int. 10. You say in your direct examination that you saw woven elastic goring in the market a year before 1847; please state where you saw it.

Ans. Eugene Ferris's.

Cross-int. 11. In what state was it when you saw it there?

Ans. I can't comprehend that question.

Cross int. 12. Was it in Congress boots?

Ans. I saw it in Congress boots.

Cross-int. 13. Where did you see it in Congress boots?

Ans. I saw it at Eugene Ferris's, as I said before.

Cross-int. 14. Did you see it anywhere else but at Eugene Ferris's?

Ans. After that I saw it in Lorin Brooks' store.

Cross-int. 15. Where was Lorin Brooks' place of business at that time?

Ans. 150 Fulton street, New York City.

Cross-int. 16. Did you see it in Congress boots there?

Ans. I did.

Cross-int. 17. Where these boots new and ready for sale?

1206 Ans. They were ready for sale. I don't know how new they were; they were not old ones.

Cross-int. 18. Did they appear to have been worn?

Ans. That is what I meant by their not being old—not having been worn.

Cross-int. 19. Was it not an old pair that had come to be mended?

Ans. No, sir.

Cross-int. 20. Where did you procure the India-rubber thread to supply M'r Cory with to make shoe elastic goring in 1847?

Ans. I got it of a M'r Dunham, in Newark.

Cross-int. 21. Who was that M'r Dunham, in Newark?

Ans. He was a manufacturer of India-rubber goods, on Railroad avenue.

Cross-int. 22. Please describe the kind of India-rubber goods he made.

Ans. I don't know what kinds of goods he made. What I bought of him was like that (pointing to Exhibit Helm No. 2).

Cross-int. 23. Did he make a trade of cutting India-rubber threads?

Ans. I think not, sir.

Cross-int. 24. Was that the only India-rubber thread he cut for you, think you?

Ans. He only made one piece for me.

Cross-int. 25. How large was that piece?

Ans. I don't remember exactly—ten or fifteen yards.

Cross-int. 26. How wide was the piece?

Ans. I think it was the width of muslin—3-4 of a yard—something like that.

Cross-int. 27. Did you order it to be made?

Ans. Certainly.

Cross-int. 28. How many pounds, about did it weigh—the piece that you bought of him?

Ans. I don't remember.

Cross-int. 29. Did you fetch it away yourself?

Ans. I guess not.

Cross int. 30. What did he charge you a pound for it?

1207 Ans. I don't remember.

Cross-int. 31. Have you no receipt of the money that you paid him for it?

Ans. I don't know that I have.

Cross-int. 32. Did it weigh fifty pounds, the roll that you bought of him?

Ans. I have said I didn't remember the weight of it.

Cross-int. 33. How large was M'r Dunham's place where he made the India-rubber goods?

Ans. I never measured it. I never thought about the size of it.

Cross-int. 34. How many stories was his building?

Ans. All I recollect of the building is that it was rather an old, low building. I think a wooden building.

Cross int. 35. Do you recollect the number in Railroad avenue?

Ans. I think the buildings in that street were not numbered at that time.

Cross int. 36. Did he make his goods by steam-power or by hand?

Ans. I don't know, sir; he was doing business in a small way. I don't know whether he used power or not.

Direct examination resumed by M'r Dean:

Int. 37. Do you think you are mistaken with reference to any date you have given in your testimony? If so, please state what date it is and the circumstance connected with it, and correct your mistake, if there is any.

Ans. The date M'r Cory stated making the web was in 1847. I thought it was 1848, and so stated in my former testimony on that subject. I arrived at the date by counting the years that I had lived in Newark. I came there in 1844, and called one year 1845, and the next 1846, and so on till I arrived at it; but I should have counted the year 1844 for one year, and the three years would make it 1847.

I. BANISTER.

Subscribed and sworn to before me this 8th day of April, 1870.

JOSEPH GUTMAN, J'R,
Examiner, &c.

1208 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Gutman, j'r, a master and examiner, duly appointed by the circuit court of the United States for the southern district of New York, and a United States commissioner for said southern district, do hereby certify that the foregoing are the depositions of the witnesses examined before me on the part of the defendants in the causes in the captions to said depositions named, and which was taken before me on the respective days therein mentioned, and that the exhibits thereto annexed are the exhibits which were respectively deposed unto by the respective witnesses to whom exhibited and by whom produced.

[L. S.] JOSEPH GUTMAN, J'R,
United States Commissioner and Examiner and Master in Equity, duly appointed by the Circui Court of the United States for the Southern District of New York, in the Second Circuit.

Exhibit Wakeman 1—J. G., Jr, Examiner.

NEW YORK, *November 9th*, 1849.

Articles of a limited agreement between William Smith, of New York, and Dodd and Wakeman, of Newark, N. J.

1st. The above parties mutually agree to commence the manufacturing of elastic and other webbing for boots, suspenders, and other purposes, consisting of India rubber, cotton, silk, and worsted, separately or combined, or any other articles mutually agreed upon.

2d. William Smith, of the first part, shall furnish the following machines: One of eight shuttles, four and a half inch slott; two of eight shuttles each, three and a half inch slott; one of twelve shuttles, two-inch slott, valued at one thousand dollars. Dodd & Wakeman, 1209 of the second part, shall furnish, when required, one thousand dollars each to carry the aforesaid agreement into effect.

3d. William Smith, of the first part, shall have the management, and sole management (the words "sole management" have a line drawn through them, and the word "superintendence" is written above them in pencil) of the manufacturing department to carry the same successfully into effect. Dodd & Wakeman, of the second part, mutually agree to furnish room and power at as cheap a rate as any other room or power in Newark, N. J.; D. & W. to attend to the buying and selling. (The words "D. & W. to attend to the buying and selling" are in pencil.)

4th. That there shall be kept true books of account, free of access to all the above parties.

5th. The goods manufactured shall be sold to the best advantage for the above concern, either if sold to Dodd & Wakeman or any other party, to have them at market rates. (The words "to have them at market rates" are in pencil.)

6th. If Dodd & Wakeman wish to purchase all or part of the goods manufactured, they shall show a true and just account of the cost of such goods to import, showing forth invoices, shipments, brokerage, custom-house duties, interest of money, cartage, and all and every expense attending such importation; they shall have the choice to purchase the goods manufactured, always providing no better price can be made in the home market, and if better price can be made in the home market, they shall pay to the full extent of such market prices.

7th. William Smith, of the first, agree to commence the manufacturing of the above article at 25 per cent., forfeit the expense.

8th. Mess. Dodd & Wakeman mutually agree to furnish money necessary and sufficient to manufacture the above goods, and if business is extend', to furnish funds to carry out the same.

9th. The above concern shall be kept distinct, and have no connection in any or whatever manner with Mess. Dodd & Wakeman is or shall be concerned in, nor shall the concern be liable for any private debts of any of the above parties.

10th. As soon as the above machines are put in operation, the' 1210 shall be true and just articles of partnership entered upon, embracing the above agreements; either party neglecting or refusing to do the same shall forfeit all the expense occurred and all connection in the concern.

N. B. Any addition to be added that may be mutually agreed upon.

11th. Stock shall be taken every six months (the words "every six

months" are in pencil), and ballance-sheet made out every three months, commencing May 1st, one thousand eight hundred and fifty.

And the seventh article of this agreement shall be forever null and void to all intents and purposes.

Exhibit Dodd 1—J. G., jr.

NEWARK, *February 19th*, 1848.

Received from Mess'rs M. Dodd & Son forty dollars on account of loom, &c. $40.00.

HENRY G. GURNEY.

Received from Mess'rs M. Dodd & Son the sum of twelve dollars on account of building loom. Newark, March 2d, 1848. $12.00.

HENRY G. GURNEY.

NEWARK, *April 15th*, 1848.

Received from Mess'rs M. Dodd & Son twenty-five dollars on account of loom building. $25.00.

HENRY G. GURNEY.

1211, 1212 EVIDENCE FOR RESPONDENTS.

Taken pursuant to the 67th rule of the Supreme Court of the United States in equity as amended, before

W. GRIER HIBLER,
U. S. Commissioner and Examiner, by Agreement.

PHILADELPHIA, PA., *March* 31, 1870.

Present: Benj. Dean, esq., of counsel for respondents; William Smith, complainant.

M'r Smith objects to the examination of witnesses, and leaves the room while Ferdinand Doebley is being sworn as a witness.

Deposition of Ferdinand Doebley.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. Have you been examined before as a witness in these causes? Ans. Yes, sir.

Int. 2. Did you ever go with M'r John Thornley and your father Solomon Doebley, to Col. Joseph Murray's store? If yes, when was it, and what occurred?

Ans. I went there, I think, in 1843. It might have been '44, but I think 1843. Father had a sample of what he called shoe-webbing, which he was making at that time. It was similar to Exhibit "Thornley," only a better article, and there were pieces of two colors. I know it was the spring of the year 1843 we were there. It was the commencement of the Polk excitement. M'r Thornley introduced my father to Col. Murray, and father showed him the samples and explained to M'r Murray what the goods were intended for. Murray asked what it could be made for—the price. And M'r Murray asked him what the difference
1213 would be in the price with silk face or without, and father named a price which I cannot give you now. Murray thought it was too high in comparison with other goods which were being used. Father told him he would like to test the article himself, and ordered a pair of

shoes for himself with this webbing to be put in the shoes. The shoes were made for him, and after M'r Murray saw the material made up in the shoes he told father that he would try a few yards of it.

Int. 3. Did your father afterwards wear said shoes?

Ans. Yes, sir; he wore them a long while.

Int. 4. Did he sell any webbing to M'r Murray?

Ans. Only a few yards.

Int. 5. When did your father go out of business, and are you able to fix the date by any memorandum?

Ans. I fix the date from the time of my going into business. He went out in the early part of 1850. I have all my books showing when I commenced business. He failed in business early in 1850, and never went into business again. I have here present his note-book, by which it appears that the last dated note he gave was to Joseph Ripka, dated February 23, 1850, for $567.20. I afterwards used the same book, and the first note I gave was dated July 8th, 1850

Int. 6. Were any notes given by your father to John Thornley? If so, describe the last notes.

Ans. The last notes, one dated January 9, 18 0, at six months, for $173.11; one other, February 5, 1850, at six months for $223.35.

Int. 7. Were said notes paid?

Ans. No, sir. My father was never in condition afterwards to pay them.

Int. 8. When did you, if ever, give up the business of weaving webbing?

Ans. In 1852, the summer.

Int. 9. Have you any memoranda by which you can fix the date?

Ans. Yes, sir; I have a diary here which shows the time I sold out to Lombard and Buttrick & Co. all my stock. It was in August, 1852. I shipped the goods to New York, August 14, 1852. I also know apart from my book. After selling the goods in New York I went to
1214 Yonkers on 2d August to see the wreck of the steamer Henry Clay. The goods were shipped after that, when I returned home. After quitting the business I took the machine down and stowed it away and sold it in 1853 to Maurice Raleigh.

Int. 10. Had your father previously sold goods to Raleigh; and if so, for how long a time?

Ans. I think for some four or five years. These were generally shipped west to his brother. And I also sold him for nearly two years.

Int. 11. Did M'r Smith ever call upon you; if yes, when first, and what took place?

Ans. Yes, sir; he called upon me about the first of July, 1869. He said that M'r Thornley and M'r Horstman had directed him to me. He said he understood that father had been in the webbing business. I told him he had, and that I also had been in it. He then asked me if I had any samples of suspender webbing about me or about the place. I said I had some. He then asked me to show him what I had. I then got samples of some webbing I had. He then said that is not the kind I want. I then showed him the shoe-webbing, as I called it, like exhibit marked Thornley. He then said, did your father make that kind of webbing? I answered, yes. He said, when? I answered about 1842 or 1843. He said, so long as that? I said, yes, sir. Well, he said, it don't matter about that, laying it aside as though that was not what he wanted. I then said to him, what is the trouble about this webbing? He said a party had entered suit against him for weaving corrugated webbing, and he said, I believe your father made some? I said, yes, father did weave

some corrugated webbing for suspenders. I told him I believed another party by the name of Pritchard, near New Haven, had made some of the same kind of goods. He then asked me if I could get him a piece similar to what father had made. I told him I did not know, but I would try. I told him one trouble would be about getting rubber thread. He said, I will furnish that to you. I told him if he would, I would have the web made. He then brought some rubber and yarn on spools or bobbins. I then went with him to a place on Market street and made the arrangement. And he told me if I succeeded in getting it woven to send it over to him, as he wanted to use it in evidence. The man at
1215 Goldthorpe's, at 6th and Market, put the warp in the loom. After weaving a small piece I found that it would not corrugate; it was too thick. It was woven as he suggested. I then had half the warp taken out so as to have half the quantity. Then we got a piece from the loom after we got a piece from the chain from the loom. I then sent it to him to New York. He wrote me back that it was not crimped enough, but thought he would be over in a few days, then he would see if he could get it woven right. He came on some time after. I met him at M'r Heaton's, at Walnut street. I then told him I did not think I could get it. He said, well, I guess we will leave the matter, but I may want you as evidence. I s'pose you will come in case I want you. I said, yes, if I have proper notice, and can do you any good. After that I heard no more from him.

Int. 11*a*. Where is M'r Smith's letter to you, and will you annex it?

Ans. I have not the letter. I destroyed it some time ago, as I did not consider it worth anything. I supposed the whole matter had been settled and dropped. I received as many as two other letters from him.

Int. 12. Did M'r Smith tell you for what purpose he wanted the sample made?

Ans. He said to show what father had made. My impression was at the time to show that father had made that kind of goods.

Int. 13. Did M'r Smith receive from you a sample of the shoe-goring made by your father?

Ans. Yes. He said I may as well take a bit of that with the other samples. I cut him samples from the different pieces of web I had there.

Int. 14. When did M'r George F. Dodd call upon you and request your testimony in these cases?

Ans. It was about the first of the year, just before I gave my testimony in New York. He came to me by directions from M'r Hortmann.

Int. 15. Did you ever, before giving your testimony here, give a history of these interviews with M'r Smith, and an account of your attempt to make webbing for him?

Ans. Only in a general way to Thomas J. Martin. I also told
1216 M'r Dean. I had had a conversation with M'r Smith, and had given him a piece of it (shoe-webbing); that was all I said to him and that was last evening.

Int. 16. Did M'r Smith say where he got the rubber he brought with him with which to make the sample?

Ans. Yes; he told me all how he got it. He said he had managed to get some pure rubber, or native rubber, as we call it, and that he cut it himself with scissors. I have a piece of the rubber he brought on a spool. After he brought it on the spool the warp was made from the spool. He brought the other material, that is, the yarn.

Int. 17. How many times was he at John Goldthorp's?

Ans. He was there twice.

Int. 18. Did M'r Smith give you any money on any occasion, and if so, what was said and done?

Ans. The first time he came on, after being with him part of the day and receiving some samples of webbing, he tendered me five dollars. I told him I did not wish to take any recompense from him. He said yes, you must take it. He said the day is very hot, and you have given yourself some trouble. After insisting I should take it, he said you may make me two or three reeds and send it to me. He said, make them so that you think they will answer for corrugated web. I think I made him two. One reed was for the rubber in every second dent, and the other was a rubber for every third dent, making these spaces farther apart.

Int. 19. Did you ever make any shoe webbing after your father went out of business?

Ans. No, sir; I never made any myself, nor did my father for six or seven years before he went out of business.

Int. 20. How did you send the reeds to M'r Smith?

Ans. By express, Adams' Express.

Int. 21. Can you fix the date?

Ans. I think I have the receipt at home, which I will annex to my deposition.

Int. 22. Will you permit your father's note-book, which you have here and referred to, to be annexed to your deposition?

1217 Ans. Yes, sir.

Int. 23. In whose handwriting is this book?

Ans. All the entries in the book are in my hand, and I know the transactions took place as there recorded. The notes were entered on the book on the day they were given; sometimes they were dated back when the accounts were averaged. All the time mentioned in this book I bought the rubber myself.

Int. 24. During the giving of your testimony, has M'r Smith, the complainant, at any time, been present, and what did he do during that time?

Ans. In the first place, he left the room while I was being sworn. He returned subsequently, after about 9th sheet in my eleventh answer, after where I say "the man at Goldthrop's put the warp in the loom."

F. DOEBLEY.

Sworn and subscribed before me this 31st March, 1870.

W. GRIER HIBLER,
Examiner, &c.

Deposition of Frederick W. Appenfelder.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Frederick William Appenfelder, aged 33 years to-day. I am a weaver, and foreman of John Goldthorp's factory in Philadelphia.

Int. 2. How long have you been acquainted with weaving?

Ans. About twenty years. I made trimmings and India-rubber suspenders in Germany, but here mostly in trimmings and furniture work.

Int. 3. Did you undertake, last summer, to make any elastic suspender webbing; if yes, who came to the factory to get it done or made?

Ans. M'r Smith came first alone, and made the warp. He was
1218 willing to do it himself, but was too fat to go into the loom, and

I made it for him. He first made the warp, and then he said the loom was too small for him, and asked me if I could do it for him, and I did do it.

Int. 4. State all that M'r Smith said and did on that occasion.

Ans. M'r Smith went down and sees M'r Goldthorp, and then came back and told me M'r Goldthorp was willing for me to do it for him. I asked him what it was for; he said the same thing was made twenty or thirty years ago.

Int. 5. What kind of rubber was it?

Ans. The same kind as this "Doebley"; it was not cut even.

Int. 6. Who brought the rubber there?

Ans. I am not sure who brought it, whether M'r Smith or M'r Doebley brought it; one of them did.

Int. 7. Who brought the other materials?

Ans. M'r Smith.

Int. 8. How soon after M'r Smith was first there was it when M'r Ferdinand Doebley came?

Ans. It was the same day, two or three hours after. They both came together.

Int. 9. What was then done?

Ans. I put the warp in the loom and fixed everything so I could weave on it and make a sample.

Int. 10. Did anybody then give you directions; if so, who?

Ans. The lees had been made by M'r Smith, then I put them in the loom and wove a sample. It did not corrugate. I thought it was not right; spoke to M'r Doebley, he said it was not right; so we took out half the warp and made another piece which M'r Doebley took.

Int. 11. Did M'r Smith at any time in your presence tell the reason why he wanted the sample made?

Ans. No, sir; except that he wanted some like that made twenty or thirty years ago.

F. W. APPENFELDER.

Sworn to and subscribed before me this 31st day of March, 1870.

W. GRIER HIBLER,
Examiner, &c.

1219 PHILADELPHIA, PENN., *December* 16, 1870.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant.

Deposition of Rudolph Broeger.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your age, residence, and occupation?

Ans. I am about 65 years of age. I reside in Haines street, in the city of Philadelphia. I am doing nothing now. My business was weaving.

Int. 2. Were you ever in the employ of Solomon Doebley; if yes, when, and what kind of goods did you weave?

(The evidence of this witness is objected to, as Solomon Doebley has been nearly 20 years deceased, and his name is not set up in the answer to the bill of complaint.)

Ans. I was. About 1845, I guess, or 1846. About that time. I first went there about 1844 or 1845. I left him before the Mexican war. That was, I guess, in 1847. I weaved there gum-elastic suspenders.

(M'r Smith objects to the whole of the testimony of this witness.)

Int. 3. Do you know Ferdinand Doebley, the son of Solomon Doebley, and was he in his father's employ or about his factory at that time?

(Objected to.)

Ans. I know him. He was a child. He was in his father's employ or about his factory at that time.

Int. 4. How many kinds of gum elastic suspenders were made at M'r Doebley's factory at that time?

(Objected to.)

Ans. When I was there, there were different kinds made—like this gentleman (M'r Dean) has, or Exhibit Broeger, No. 1, W. G. Hibler, Examiner. I don't know the names of the other kinds. There
1220 were ruffled suspenders, cord suspenders. That is all I know, and a kind of suspender with a figure, silk top, and cotton on the lower part.

Int. 5. Did he make any elastic goods for any other purpose than suspenders?

(Objected to.)

Ans. Yes, sir. He made a kind for gaiters—the sides of gaiters.

Int. 6. Is there present any sample of goods similar to those made by M'r Doebley for gaiters?

(Objected to.)

Ans. I do not know. I did not bother me about suspender weaving fifteen years ago.

Int. 7. What do you mean by fifteen years ago?

(Objected to.)

Ans. I did not work any more on suspenders; that's the meaning of it.

Int. 8. Have you not worked on suspenders within the last fifteen years; is that what you mean?

(Objected to.)

Ans. Yes, sir; that is what I mean.

Int. 9. Did the elastic suspenders made by Solomon Doebley have India-rubber threads or cords in them?

(Objected to.)

Ans. They had gum elastic in it.

Int. 10. What covered the India-rubber or gum-elastic threads at top and bottom of the fabric made for gaiters?

(Objected to.)

Ans. Cotton.

Int. 11. What were the threads that covered the gum elastic or India rubber; were they the filling or warp?

(Objected to.)

Ans. The filling.

Int. 12. Was that all that covered them at top and bottom?

(Objected to.)

Ans. Yes, sir.

Int. 13. What threads covered the gum elastic or India-rubber cords of the suspenders made with a silk face and cotton back?

1221 (Objected to.)

Ans. Silk and cotton. On the top silk, and on the lower part cotton. The threads were the filling, nothing more. They can be made no other way.

Int. 14. What threads, whether filling or warp, or both, covered the gum elastic or India rubber in the corded suspenders you have spoken of?

(Objected to.)

Ans. The gum elastic was covered with cotton and the filling bound the threads together. On top and bottom of the cords there was only a single thread filling, and only six or eight threads along the top of the gum elastic. The filling holds the threads together. The threads were three or four ends twisted together and made the filling. That's right.

Int. 15. What were the threads along the top of the gum elastic, filling or warp threads, on the corded suspenders?

(Objected to.)

Ans. It was a kind of filling, single threads around the gum elastic. That is all, only it was a six end. The cotton was a kind of filling, soft cotton.

Int. 16. Was there anything on top and bottom of the rubber cords except the filling in the corded suspenders?

(Objected to.)

Ans. No, sir.

Int. 17. How were, then, the gum elastic or rubber warp threads covered in the ruffled suspenders; were they covered by the filling, or by the warp, or by both?

(Objected to as outrageously leading.)

Ans. By the filling.

Int. 18. Was that all that covered them on top and bottom?

(Objected to.)

Ans. Yes, sir.

Int. 19. Look at Exhibit Broeger No. 2, and then state whether you ever saw any fabric like that before; and if yes, where?

(Objected to.)

Ans. Yes, sir; at Solomon Doebley's.

Int. 20. When?

1222 (Objected to.)

Ans. About twenty-three years or twenty-four years ago.

Int. 21. Was it or not while you was in M'r Doebley's employ?

(Objected to.)

Ans. It was.

Int. 22. How many years were you in M'r Doebley's employ? State as near as you can.

(Objected to.)

Ans. I guess about two years or two and one-half years, maybe three years.

Int. 23. What name was given to suspenders like Exhibit 1, if any?

(Objected to.)

Ans. We call in German "sack" suspenders; that is, a bag.

Int. 24. Why was it called by that name?

(Objected to.)

Ans. Because the gum elastic is free in the web; because it lays as sack; when not closely woven you can pull the gum elastic out.

Int. 25. State whether or not in said exhibit there is a piece of cloth all around each gum-elastic warp thread.

(Objected to.)

Ans. There is. There are two threads on each side of the gum elastic. In some there is only one, and that is what makes the sack.

Int. 26. What do you mean by the threads being on each side; do u mean they are on top and bottom of the gum-elastic cords as well between them?

Objected to as leading.)

Ans. On the side from the gum-elastic thread it goes up and down and binds on the lower part and top. We could not make a sack without.

Int. 27. How were the rubber warp threads covered in the other suspenders made by M'r Doebley, excepting the Exhibit No. 1; were they covered as they are in said exhibit, or as they are in Exhibit No. 2; and if not like either of said exhibits, how were they covered, and by what at top and bottom?

(Objected to as outrageously leading.)

1223 Ans. All cotton. Some like No. 1 and some like No. 2. When I left M'r Doebley we were good friends, and he told me all about his suspender manufacture. That is all that I did see.

Int. 28. How were they so covered during the time you worked for M'r Doebley; I mean the gum-elastic cords as compared with said exhibits?

(Objected to.)

Ans. Like them. We made different kinds.

Int. 29. Who wove the gum-elastic suspenders that had a silk face and cotton back?

(Objected to.)

Ans. Lawrence Smith.

Int. 30. Where is he?

(Objected to.)

Ans. In the graveyard.

Int. 31. Who else worked there when you worked for M'r Doebley?

(Objected to.)

Ans. Lawrence Smith's brother was there. He is not dead. He is somewheres in the State of Delaware; don't know where.

Int. 32. Is Solomon Doebley alive?

(Objected to.)

Ans. No, sir.

Int. 33. Did Lawrence Smith weave the gum-elastic suspenders with silk face and cotton back while you worked for M'r Doebley?

(Objected to.)

Ans. Yes, sir.

Int. 34. In what kind of a loom?

(Objected to.)

Ans. Hand loom.

Int. 35. How many shuttles and shuttle-boxes were there in the said loom?

(Objected to.)

Ans. In the silk-face and cotton-back suspenders there were six or eight; I can't say exactly; I don't know. Eight would make twelve or sixteen shuttles. Every web had two shuttles; one for cotton and one for silk.

1224 Int. 36. In weaving such gum-elastic suspenders, were there any threads called "binders"?

(Objected to.)

Ans. Yes, sir; all except the cords.

Int. 37. Where did those binders lay, in the warp?

(Objected to.)

Ans. Right by themselt. There is more than one warp to make a suspender like that.

Int. 38. In making suspenders did all the rubber cords rise and fall together, when the shed was formed, or did part rise and another part fall, at the same time?

(Objected to as leading.)

Ans. They fell together and rose together.

Int. 39. What did M'r Doebley do with his suspenders, &c., that he made?

(Objected to.)

Ans. He sold them.

Cross-examination by M'r Smith:

Cross-int. 40. Who called on you to give testimony first in this case?

Ans. Ferdinand Doebley.

Cross-int. 41. When and where was it that he called upon you?

Ans. Last summer, at where I board, in Harris street.

Cross-int. 42. When was the last time he called upon you to give testimony in this case?

Ans. A few days ago.

Cross-int. 43. How many days ago?

Ans. I guess three or four. Not more than four anyhow.

Cross-int. 44. Was it on Tuesday last?

Ans. Maybe; Tuesday or Wednesday.

Cross-int. 45. Do you not know that it was Wednesday, when he called on you?

Ans. No, I am not sure of it. I am short in my memory of time.

Cross-int. 46. What did Ferdinand Doebley say to you when he called upon you?

1225 Ans. He inquired about the pattern that his father made, and if I remembered if he made them for gaiters, and I said, yes.

Cross-int. 47. When was the first interview you had with M'r Dean, this gentleman now here?

Ans. A few evenings ago; Tuesday or Wednesday.

Cross-int. 48. Can't you recollect whether it was Tuesday or Wednesday?

Ans. Tuesday or Wednesday. I can't recollect.

Cross-int. 49. Where was it that you had that interview with M'r Dean?

Ans. At the house where I board.

Cross-int. 50. Was there any other person along with M'r Dean when he called upon you?

Ans. M'r Doebley.

Cross-int. 51. Did not M'r Dean explain to you at that interview the difference between warp threads and weft threads, and the interlocking of the warp threads with the weft threads, showing you at the same time samples of pieces of gum-elastic fabrics?

Ans. No, sir. He did not speak from anybody, and did not show me samples.

Cross-int. 52. Did not Ferdinand Doebley do so?

Ans. He showed me the piece of web and asked me if I remembered that this same kind of goods were made in his father's factory. I said yes, I remembered it.

Cross-int. 53. What else transpired at that interview?

Ans. Nothing farther.

Cross-int. 54. How long did that interview last?

Ans. About ten minutes or a quarter of an hour.

Cross-int. 55. Have you had any interview since that time with Ferdinand Doebley or M'r Dean?

Ans. No, sir.

Cross-int. 56. Who called on you to bring you down here to testify?

Ans. M'r Doebley. He showed me the road.

Cross-int. 57. Are you an expert in weaving?

Ans. What is the meaning of it?

1226 Cross-int. 58. Do you fully understand the nature of weaving, and the loom for these kinds of fabrics, as testified to, are made on?

Ans. I weaved on such looms. We had a foreman there so that if anything happened that a weaver did not understand, the foreman could come and fix it.

Cross-int. 59. Was you capable of fixing the loom yourself if anything went wrong, without the foreman?

Ans. Some part of it. There is more than one thing on a loom to make this webbing.

Cross-int. 60. What part of it was you capable of fixing yourself if it was wrong?

Ans. The treddles to move right. The rest I could not do.

Cross-int. 61. What kind of goods did you weave while you were at Solomon Doebley's?

Ans. The first I made was cord suspenders. The second, like Exhibit No. 1, the "sack" suspender. That is all I wove.

Cross-int. 62. What kind of a loom did you weave them in?

Ans. The cord suspender I weaved on a hand-loom with eight shuttles. The other, Exhibit 1, on a swivel loom with twelve shuttles.

Cross-int. 63. How many pieces of fabric did you weave at once?

Ans. In the one loom, eight; in the swivel loom, twelve.

Cross-int. 64. How many treddles had you when you made suspenders like Exhibit No. 2?

Ans. None. I never made any like Exhibit No. 2. I never made any suspenders in that way. I made suspenders with ruffles.

Cross-int. 65. Look at Exhibit No. 2 and say how many treddles it would take to make that goods.

Ans. I guess four; I never made it. It was made on a hand-loom by Lawrence Smith.

Cross-int. 66. How many heddle shafts would it take to make Exhibit No. 2?

Ans. I am not sure of it; I think it can be made by four, only I am not sure of it.

Cross-int. 67. Is that the best answer you can give?

Ans. That is the best.

1227 Cross-int. 68. Did you ever weave any suspenders before you went to weave them at Solomon Doebley's?

Ans. No, sir.

Cross-int. 69. What kind of goods have you been used to weaving prior to going to Doebley's?

Ans. Pantaloon stuff.

Cross-int. 70. How old were you when you learnt the art of weaving?

Ans. I learned it in Europe; I was fifteen years old; we did not make the same goods there.

Cross-int. 71. You say you wove ruffled suspenders. Please describe how you made them.

Ans. I made some on the hand-loom.

Cross-int. 72. (Question repeated.)

Ans. I made them on the hand-loom; that is all I can say. The ruffles were made by the shrinking of the gum-elastic.

Cross-int. 73. How wide were those suspenders you made ruffled?

Ans. Two or two and a quarter inches.

Cross-int. 74. How many rubber cords had you in them in each piece?

Ans. This is the boss's business, how many he wants.

Cross-int. 75. How many did the boss put in the suspender web in each web you made for him?

Ans. Ten; that is according to how the gum-elastic was. We could make them stronger or heavier so that they could shrink more. There was no use to take more than ten when the gum-elastic is heavy as it was at that time. Don't know how it is now.

Cross-int. 76. Was your reeds that you made them in spaced; that is, a wide dent, wider than the rest for the rubber to lie in?

Ans. You mean a wide split in the reed? I don't know. We tried them in different ways, according to the rubber. I don't know if we had a wider split. I don't remember.

Cross-int. 77. How many splits in the reed were there between each rubber cord in the fabric?

Ans. There is a difference. When I take eight or ten threads I have to measure how many threads to put in between the gum-elastic
1228 warps. Maybe it will take four, maybe it will take five split between the gum-elastic. The web is all the time the same width, whether I take eight or ten rubber cords. It remains same width.

Cross-int. 78. How many splits in the reed to the inch were there in the gum elastics you wove at Solomon Doebley's?

Ans. I don't know exactly; about 30 or 32; I am not sure of it.

Cross-int. 79. What kind of cotton did you use in making those goods for the warp and for the weft?

Ans. That is the boss's business. We have to take the cotton that he buys.

Cross-int. 80. Was it a fine or coarse cotton?

Ans. It was not so fine. When he makes a finer article he takes a finer cotton.

Cross-int. 81. You will please confine your answer now at present to the ruffled suspenders. Do you know the difference between 20's cotton and *and* 30's cotton?

Ans. Yes, sir.

Cross-int. 82. Was that cotton you used for ruffled suspenders double and twisted or single cotton, and say, as near as you can, what was the number of it?

Ans. I think we tried it first with double and twisted; then single. The number was twelve or fourteen.

Cross-int. 83. How many cotton warp-threads would you put in each split of the reed in making these ruffled suspenders?

Ans. You mean how many ends in the split; well, that's different. When I have cotton No. 12 or No. 16 it makes a difference.

Cross-int. 84. How many ends had you in the split when you used No. 12?

Ans. That's the boss's business. If he says so we have to make it. We have to draw it in with more or less, as he says.

Cross-int. 85. And those ruffled suspenders that you made at Doebley's, how many ends in the split did the boss tell you to put in, and how many did you put in?

Ans. That is different, too. He might tell us to put in three or four. That is the boss's business.

Cross-int. 86. How many did you put in?

1229 Ans. That I cannot say exactly; perhaps three or I may four,

according to the cotton; when I have 12 or 16 there is a difference between them. I can't answer better.

Cross-int. 87. How many cotton warps had you when you were making those ruffled suspenders at Doebley's?

Ans. One.

Cross-int. 88. How many warp ends or threads in that warp had you when you made those ruffled suspenders?

Ans. I don't know; I don't remember.

Cross-int. 89. What kind of a selvedge had those suspenders to them?

Ans. White.

Cross-int. 90. How many threads or ends had you in the selvedge?

Ans. Maybe about sixteen.

Cross-int. 91. Was them selvedge threads wove the same as the body of the fabric of the ruffled suspenders?

Ans. Yes, sir.

Cross-int. 92. How many heddle shafts had you to make the selvedge of these suspenders?

Ans. The same as the body.

Cross-int. 93. Did you make it on the same heddle shafts as the body of the suspender?

Ans. Yes, sir.

Cross-int. 94. While you was at Solomon Doebley's, had he not a machine for covering his rubber cords with cotton?

Ans. Yes, sir.

Cross-int. 95. Did he cover his rubber cords with cotton while you was there?

Ans. Yes, sir. Do you mean by cords, the weft? It is made by cords, the gum-elastic is, with six or eight threads. You can take as many as you want. They, the weft-threads, went over the gum-elastic and that made the cord.

Cross-int. 96. Were those rubber cords covered with that machine used for making ruffled suspenders?

Ans. The gum-elastic, do you mean? No; it was not covered. We put it in the loom without being covered.

1230 Cross-int. 97. Did you ever make any gum-elastic for shoe goring yourself?

Ans. No, sir.

Cross-int. 98. What kind of a loom did you see it made in at Doebley's?

Ans. A hand-loom.

(M'r Smith states that he is examining this witness de bene esse.)

Cross-int. 99. What do you mean by hand-loom? Had it one piece in it at a time or more?

Ans. Six or eight.

Cross-int. 100. How wide was the piece made?

Ans. About four inches, I guess.

Cross-int. 101. What kind of cotton was used in making these goods? No. 12 or No. 20, or was it single cotton, or double and twisted cotton?

Ans. I think double and twisted cotton; I don't know what number.

Cross-int. 102. Can't you tell if it was 12s, 20s, or 30s, or 100s?

Ans. Not 100s; maybe 30s in double and twisted; I can't say the number.

Cross-int. 103. Were they all made with double and twisted cotton while you was there?

Ans. Yes, sir.

Cross-int. 104. When you was speaking about them silk and cotton suspenders, what kind of shuttle boxes were they? Please describe them.

Ans. A Shuttle-box with wheels. Every shuttle had two wheels. The wheels were not on the shuttle, but the shuttle run on the wheels.

Cross-int. 105. Was there in making them silk suspenders the treddles worked with the feet?

Ans. Well, they made them by the "Jacquard" loom.

Cross-int. 106. Was there only one treddle to work the Jacquard in them looms?

Ans. I think so, but am not sure of it.

Cross-int. 107. Do the Jacquard raise the India rubber and fall it?

Ans. Certainly.

1231 Cross int. 108. How was the shuttles throwed across the fabric by the weaver?

Ans. It was a kind of a shuttle with cogs; maybe you never saw any.

Cross-int. 109. Did he throw the shuttle across with a handle backwards and forwards?

Ans. Yes, sir.

Cross-int. 110. What name do you give the propeller which forces the shuttle across the fabric?

Ans. I don't understand that. I don't know what you mean. Where the shuttle is on cogs its cogs goes on wheels that move it, and the throw is communicated by the hand on that as well as on the hand-loom. At Doebley's it was all done by hand.

Cross-int. 111. What moved the rack that moved the shuttles?

Ans. Two treddles, made on the side, go on the side up on to the rack. That's all. They knock it by going up and down.

Cross-int. 112. In making those silk suspenders, was the silk put on the top or bottom of the fabric?

Ans. On the top.

Cross-int. 113. Was the silk throwed up in a figure on the top of the fabric?

Ans. Yes, sir.

Cross-int. 114. What kind of a warp had you to make those silk suspenders? Was it cotton or silk, or both?

Ans. Both.

Cross-int. 115. Did the cotton warp lie at the bottom of the fabric in those silk suspenders?

Ans. At the bottom.

Cross-int. 116. Did they lie in the same direction that the rubber cords did, lengthways of the fabric?

Ans. I don't know. That's the pattern. Our pattern is in the loom?

Cross-int. 117. How do you know M'r Doebley sold them?

Ans. Well, I saw some in the store.

Cross-int. 118. What store?

Ans. Jacob Steiner's.

1232 Cross-int. 119. Where was that?

Ans. In 10th street, between Arch and Race.

Cross-int. 120. How do you know that they were made at Solomon Doebley's; what you saw at M'r Steiner's?

Ans. I knowed the article that we made.

Cross-int. 121. You have stated in your direct testimony that you never made any silk suspenders. Now you say you knew the article what "we made." How do you explain that?

Ans. He made more than silk. He made cotton.

(M'r Smith objects to the latter part of the answer, as he is only asking about silk suspenders.)

Cross-int. 122. When did you see these goods at M'r Steiner's place?

Ans. The time when they were made.

Cross-int. 123. When was that?

Ans. I don't know. About twenty-two or twenty-three years ago.

Cross-int. 124. You stated in your direct examination that you and M'r Doebley were very friendly, and he told you all about the suspender business, what he was making, &c. When did that conversation take place?

Ans. When I left him.

Cross-int. 125. What was it that he told you when you left him?

Ans. Nothing further. I went to another place, that's all. That was afterwards, when I met him, when I was no more working for him. I don't know what; I don't know all. I must have a head like a bushel.

Cross-int. 126. Tell what you know.

Ans. We talked about the price, and how the business goes, whether sales were fast or not.

Cross-int. 127. Was that conversation after the Mexican war?

Ans. It was at the time.

Cross-int. 128. Who made those looms for M'r Doebley that those goods were made on?

Ans. One was Jacob Janney—another was Janney, too. They are both dead.

Cross-int. 129. Was that single shuttle loom that you speak of, 1233 with eight shuttles, was it in operation when you left M'r Doebley's?

Ans. No, sir; I guess not.

Cross-int. 130. What became of it?

Ans. It was sold.

Cross-int. 131. Who was it sold to?

Ans. To M'r Ashgrove.

Cross-int. 132. When?

Ans. That's hard to say exactly when. Not while I was working there. I had it made. I moved it out to Doebley's and worked there for him on my loom. The work was his but the loom was mine.

Cross-int. 133. Did you take it away with you when you left?

Ans. No, sir. I sold it to Ashgrove.

Cross-int. 134. Do you know what became of it after M'r Ashgrove had it?

Ans. No, sir.

Direct examination resumed by M'r Dean:

Int. 135. Were all the suspenders made with silk face and cotton back figured suspenders?

Ans. No, sir.

Int. 136. How was it with those that were not figured?

Ans. They were a cord suspender. The gum elastic was covered with silk; they could be moved with two shafts.

Int. 137. What covered the rubber gum elastic warp threads at top and bottom in those suspenders?

Ans. Silk on each side like on the bottom and on the top. The cord suspenders have each side alike.

Int. 138. Both sides silk?

Ans. Yes, sir.

Int. 139. What threads covered the gum elastic warps at top and bottom; filling or warp, or both, or how were they covered?

(Objected to as leading.)

Ans. Warp covered the gum elastic.

Int. 140. Were they woven like sample Exhibit 1?

Ans. No, sir. They cannot be made with two shafts. We made
1234 only two warps in silk. They came too high. They sold at $3 a pair, and he could not make anything by it.

Int. 141. How did the warp threads cover the gum elastic warp threads?

Ans. That was made by machine.

Int. 142. Do you mean that in those suspenders while being woven in the loom the other warp threads crossed over and covered the gum elastic warp threads?

Ans. There was no other warps. There is only one warp.

Int. 143. Were all the warp threads made of gum elastic covered with silk?

Ans. Yes, sir. Those two are what I mean.

Int. 144. Do you remember any suspenders made with silk face and cotton back in which the gum elastic cords were covered like in Exhibit No. 2?

(Objected to as leading and as previously answered.)

Ans. No, sir. Maybe it was. I don't know. I can't remember.

RUDOLPH BROEGER.

Sworn to before me this 16th day of December, A. D. 1870.

W. GRIER HIBLER,
U. S. Comm'r and Examiner.

The cross-examination of Appenfelder and Martin, witnesses heretofore used by the respondents and tendered for examination, is now waived by the complainant.

In behalf of the respondents, M'r Dean tenders Ferdinand Doebley for cross-examination.

Complainant objects to any further testimony being taken in this case until the record of to-day's evidence has been examined by M'r Phillips,
1235 the examiner appointed by consent of M'r Hibler, defendant and complainant, M'r Dean, by consent of M'r Phillips, bringing the evidence over to the office of M'r Hibler to proceed with further evidence at quarter past 4 o'clock, but instead of doing so, he comes to the office of M'r Hibler, leaving some printed matter there, but carrying the manuscript of the evidence taken this day in his pocket. During the examination of witness this day the complainant insisted that Ferdinand Doebley should not be present during the examination, which he was not, and complainant surmises that M'r Dean carried the manuscript away to post up M'r Doebley, a witness who was to have been cross-examined on the subject-matter of the evidence taken this day, therefore complainant declines to cross-exa nine Ferdinand Doebley.

Exhibit A Z.—W. G. Hibler, examiner.

C. C. U. S., dist. of Mass.

SMITH
v.
GLENDALE ELASTIC FABRIC CO.

and

SAME
v.
N. NICHOLS.

The examiner is of opinion that the complainant has the right to go on and close the examination of his witness before the defendant commences.

W. GRIER HIBLER,
Examiner.

M'r Dean calls M'r Redman Cooper as a witness in behalf of respondents.

M'r Smith objects to the examiner's taking this witness' name down to examine him, for the following reason: that he is before the examiner giving his testimony, and has just been cross-examined on the direct testimony, and is ready to proceed with other testimony in the case; that the counsel (M'r Dean) has no right or authority to break up
1236 his time in putting his testimony in, and the said Dean, in the month of April last, before R. E. Stilwell, examiner, held him for nearly a week under similar circumstances; not permitting him to take up any part of his (complainant's) evidence until he got through with the part that he was on, and being cross-examined for several days.

Complainant says that he is willing and ready to go on, and will resume his evidence at ten o'clock Monday morning, I mean that I am ready to go on if the examiner will take my testimony.

Deposition of Redman Cooper.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Redman Cooper; 52 last January; 1329 Arch street, Philadelphia; by occupation, merchant—importer and jobber of shoe-findings. The firm is Armstrong, Wilkins & Co.

Int. 2. How long have you been engaged in such business?

Ans. More or less since 1834, when I first went as a boy.

(M'r Smith objects to every question de bene esse.)

Int. 3. Can you tell when you began the importation of woven elastic fabrics for shoe-gores?

(Objected to.)

Ans. In the neighborhood of 1850 to 1852; I can't tell exactly. In January 1, 1852, the firm was Isaac Barton & Co., composed of Isaac Barton, Redman Cooper, and Charles E. Armstrong. After the death of M'r Barton, which occurred in the spring of 1867, we sold all the old books for waste paper; I believe all. I mean that we sold all the books up to 1852, when we took M'r Armstrong in as partner. I mean that I can't tell the days of the importations made before that time.

Int. 4. Have you ever had any conversation with the plaintiff William Smith regarding his invention, or have you heard him make any remarks regarding it? If yes, what?

1237 (Objected to; further, that witness has been already examined in the matter, and same questions put to him.)

Ans. I have. The first that I recollect was when we were in No. 35 South 2d street. He came into our store on several occasions. I heard him say more than once that he had a patent for the gore, and that we were infringing it. I saw M'r Wilkins take down goods and show him. He professed to pick out which kinds we were infringing; which kind the patent covered and which it did not. He claimed that his patent covered the union; not all silk or all cotton.

Int. 5. What do you mean by the union?

(Objected to.)

Ans. It was composed of silk, cotton, and rubber. The silk was composed of silk and rubber only—no cotton; and the cotton of cotton and rubber only. The union had silk filling on one side and cotton on the other.

Int. 6. Look at complainant's Exhibit V, W. G. Hibler, examiner, and state what kind of web that is, and what M'r Smith said regarding that kind of web.

(Objected to.)

Ans. That I should term all silk; and it is not the kind that M'r Smith claimed as an infringement of his patent, but the kind he disclaimed.

Int. 7. Did you ever have any conversation with M'r Smith regarding the bringing of any suits? If yes, what?

(Objected to.)

Ans. It is hardly necessary to put down all the conversations, for I have had several. The first that I recollect he threatened suing. I told him to go ahead and we should defend it; that we had one suit with Day, and we had no objection to have another with him, for we sold very few of his goods that he claimed to cover under his patent. He gave me to understand that he was going to sue. That was before he claimed anything but the union goods. I don't remember that he claimed anything but the union goods until about four years ago. In the spring of 1869 he came into the store and wanted us to take the agency of his goods, stating that he would furnish the goods and stamps to put on them from Boston. He represented that we could make a very nice thing of it. We told him we would think

1238 of it. He sent us on a paper from Boston to sign. He shortly after came in himself and asked me to allow him to take a friendly decision against us—I mean that he wanted to take a friendly injunction against us to prevent us selling the rubber goods. I declined it, and told him that I thought he had better get his injunction in Boston. He replied that if he commenced it there it would never end. I told him that if he had a patent and the right, that we did not want to infringe, nor would we; and if he established his right we would be the first to pay him the royalty. I told him that I could not consent to a friendly suit, and that if he wanted to sue us we would defend it. One argument that he used was that we were the largest importers, and if we yielded the rest would come in without any trouble.

REDMAN COOPER.

Subscribed and sworn to before me this 17th day of December, 1870.

W. GRIER HIBLER,
Examiner, &c.

Deposition of Ferdinand Doebley.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

(Objected to.)

Ans. Ferdinand Doebly; 47 years of age; residence, 437 Wildey street, Philadelphia; manufacturer of reeds and heddles for weaving.

Int. 2. How long have you been engaged in this business?

(Objected to.)

Ans. I have been connected with the business for forty years and over; since the latter part of 1829.

Int. 3. When did you commence business on your own account?

(Objected to.)

Ans. I think it was in 1850.

Int. 4. How came that about?

1239 (Objected to.)

Ans. I succeeded my father, who had failed in business at that time. He was not engaged in business after that time.

Int. 5. What had you to do, if anything, with your father's business previous to his failure?

(Objected to.)

Ans. I attended to the out-door business for him principally.

Int. 6. Was your father ever engaged in the manufacture of elastic webbing of any kind? If yes, what kinds?

(Objected to.)

Ans. Suspender webbing and also webbing that was called at the time shoe-webbing, what is now termed shoe-goring; an article used in Congress boots.

Int. 7. How many kinds of suspender-webbing did your father manufacture?

(Objected to.)

Ans. He manufactured a number of different kinds of goods and different qualities.

Int. 8. Are there any goods now before you similar to goods made by your father? If yes, what are they?

(Objected to.)

Ans. Exhibit 2 is an article that my father made. He did make goods similar to Exhibit V, W. Grier Hibler, with the exception that one side was silk and the other was cotton. That was made for shoe-gores, but made with pure or native rubber; this sample has the vulcanized in. This (Exhibit Broeger 1, defendant's exhibit) he made some like; what we call sack-webbing. He also made others like defendants' Doebley Exhibit 3, W. G. Hibler. We made some of the shoe-goring with silk face and cotton back, the color of the silk being very dark drab or brown. He made some like Exhibit 3 Doebley, W. G. Hibler, with the exception that it was a plain edge, not a round edge as this sample shows. Edge covered with weft threads only like the Exhibits Broeger 2 and complainant's Exhibit V. Some of the suspender-web was made with the edge ruffled; no rubber in the edge.

Int. 9. Did he make any other kinds, for instance, did he make any figured suspenders, or any in which the rubber cords were covered with anything before being woven?

1240 (Objected to.)

Ans. He made figured suspender webbing, the face being silk, reverse side or bottom of cotton.

Int. 10. How long before he ceased doing business had he made goods of the kind last described?

(Objected to.)

Ans. Seven to eight years; about eight.

Int. 11. State as near as you can when he made the webbing for a shoe gore.

(Objected to.)

Ans. It was about 1843, as near as I can recollect.

Int. 12. How long before he quit business, in 1850, did he make suspenders like defendants' Exhibit 3, Doebley, and like said exhibit with plain edge or selvedge, and with ruffled selvedge; by plain selvedge I mean selvedge like defendant's Exhibit 2, and complainant's Exhibit V.

(Objected to.)

Ans. They were made as late as 1847 or 1848.

Int. 13. Look at said exhibits, defendants' Exhibit 2, complainant's Exhibit V, and state whether they are substantially different from each other or substantially the same, so far as the arrangement and relation of the rubber cords and warp and filling threads are concerned.

(Objected to.)

Ans. They are about the same; that is, the weft threads cover the rubber in both; they are held in, in the same manner, by binders between the rubber cords, except that one is silk and the other cotton. There is no difference that I see, except that one is a much finer article than the other.

Int. 14. How in respect to the arrangement of the rubber cords and warp filling threads does complainant's Exhibit V compare with defendants', Doebley, Exhibit 3?

(Objected to.)

Ans. They are substantially put together in the same way, with the exception of the edge or selvedge of Exhibit 3.

Int. 15. How does complainant's Exhibit V compare with the
1241 plain selvedged or edged suspender web, so far as the arrangement of the rubber cords and warp and filling threads is concerned?

(Objected to.)

Ans. They are substantially the same.

Int. 16. What became of the suspender web made by your father?

(Objected to.)

Ans. It was made into suspenders and put into the market for sale, and he sold the shoe goring also to some parties in the market.

Int. 17. Did your father cease making shoe goring web before he failed?

(Objected to.)

Ans. Yes, sir.

Int. 18. How long before should you think?

(Objected to.)

Ans. Probably five or six years previous to his failure.

Int. 19. Why?

(Objected to.)

Ans. Because there was little or no sale for it, and the parties using it objected to its high price. It was unprofitable.

Int. 20. Were there any other goods of a similar make to which your attention was called about the time your father was making said shoe goring?

(Objected to.)

Ans. I think about the time that father was making those goods I

saw samples of some that was said to be foreign goods. The goods I saw were similar to complainant's Exhibit V.

Int. 21. How are you enabled to fix the date your father went out of business?

(Objected to.)

Ans. From his failure in business.

Int. 22. Did you carry on the same business after him; and, if yes, how long?

(Objected to.)

Ans. I think about two years, as near as I can recollect. I quit the webbing business in 1852.

Int. 23. What became of your goods and machinery?

1242 (Objected to.)

Ans. The last of the goods I sold to Lombard, Buttrick & Co., in the summer of 1852. The machinery I sold in 1853 to Maurice Raleigh, Philadelphia.

Int. 24. Had your father previously sold goods to Raleigh; and, if yes, for what length of time?

(Objected to.)

Ans. He sold goods to Raleigh for several years; three or four probably.

Int. 25. On what kind of a loom were the shoe gorings, with silk face and cotton back, woven?

(Objected to.)

Ans. Hand loom.

Int. 26. Did the rubber warp rise and fall in the weaving of them?

(Objected to.)

Ans. No, sir.

Int. 27. How then were they woven?

(Objected to.)

Ans. By what we term a double shuttle or double lathe; a lathe with two rows of shuttles.

Int. 28. Were said shuttles stationary, or did they move up and down?

(Objected to.)

Ans. The shuttles did not rise and fall. There was no drop box. Each ran on a plain of its own, propelled by rack and pinion.

Int. 29. What held the rubber cords?

(Objected to.)

Ans. They were held in a stationary or permanent position by a bar across the loom, having eyes where the rubber passed through, to keep it from moving about. Otherwise it would bunch together. Pins would have the same effect.

Int. 30. Do you remember Rudolph Broeger; and, if yes, how can you fix the time when he ceased to be employed by your father?

(Objected to.)

Ans. By a memorandum made by myself in a book. The memorandum reads, "May 2, 1846, due and paid to R. Broeger, 73.62." That was the final settlement, I think.

1243 Int. 31. How long was Broeger in your father's employ, do you think?

(Objected to.)

Ans. He worked from 1841 to 1846, I think. Part of the time he worked at home and part of the time at the shop

Int. 32. On what loom were the figured suspenders made?

(Objected to.)

Ans. They were made on a loom with a Jacquard attached.

Int. 33. Did the rubber cords rise and fall in the said loom?
(Objected to.)
Ans. They did in the Jacquard work, that is, in the figured work. In the figured work it is done by the warp altogether.
Int. 34. You have said your father made some shoe goring with silk face and cotton back, in which the rubber cords were covered by the weft thread alone; did he make any suspenders after that fashion?
(Objected to.)
Ans. Yes, sir; there were some made.
Int. 35. Where has the webbing, like defendants' Broeger Exhibit 2, been kept since the time it was made?
(Objected to.)
Ans. It has been kept at my house or in my possession.
Int. 36. To whom have you, within the last four years, first given a piece of said web?
(Objected to.)
Ans. To M'r Smith, the complainant.
Int. 37. When was that?
(Objected to.)
Ans That was in 1869.
Int. 38. Had you, before that time, heard that there was any litigation regarding woven elastic webbing?
(Objected to.)
Ans. No, sir.)
Int. 39. What occurred between said Smith and yourself at or about the time you gave said web to him?
(Objected to.)
1244 Ans. In the first place, he called upon me and said that he had been sent to me by M'r Horstman & M'r Thornley. He asked me if I had ever been in the webbing business, or rather if my father had, and I stated that father had been in the webbing business. I told him I had also been in myself. He then asked me if I had any samples of webbing that he had made. I answered yes, I believed I had. He then asked me if he had made, or if I recollected about the corrugated web for suspenders. I told him yes, that father had made them. I think I said some twenty or twenty-five years ago. I also told him that there was another party by the name of Pritchard, at or about New Haven, Connecticut, had made that kind of web as far back as 1845. Then he went on, I think, to tell me about parties bringing suit against him for making that kind of webbing. He then asked me if I had a sample of it anywhere, such as had been made. I think I told him that I might have, but I would look. He told me if I found any to bring them down (meaning down town to him). Then when I told him that I could not find a sample of the corrugated (I had brought him what samples I could find), I also showed him a sample of the shoe goring, defendants' Exhibit, Broeger No. 2, and he said, "Did your father make that?" I said, "Yes, sir." He said, "How long back?" I said, "As far back as 1842 or 1843." And he said, "So long as that?" I said, "Yes, sir." He continued examining it a little while, and he laid it aside saying, "Oh, well, I don't care about that." Then he added, "Oh, well, I'll take a bit of it." I cut him a piece off and gave it to him.
Int. 40. What further, if anything, was done with reference to procuring a piece of corrugated work?
(Objected to.)
Ans. He asked me if I could get a piece woven, or find a piece such as my father made. I mean the corrugated web. I told him that the

trouble would be in having a piece woven or made on account of getting the proper material; for instance, the rubber thread. I told him that in those goods native rubber had been used, and that I believed now that nearly everybody was using vulcanized rubber. He then said he thought he could get the material if I could find some party to weave it, or find a loom to have it woven on.

1245 Int. 41. What else occurred with reference to it?

(Objected to.)

Ans. He afterwards brought the material, rubber and yarn, to have some of the corrugated web made from; and we went to a place at the northeast corner of 6th and Market streets, Philadelphia, at Goldthorp's, and had arrangements made to have a piece of the web woven. M'r Smith made the warp himself, that is, the yarn warp, and made arrangements to have it woven. He was in a hurry, I think he said, to go away and take some testimony, and he would leave the matter with me. I got M'r Appenfelder to weave a piece of the web. I then found that it would not corrugate, that there was entirely too much warp in it. I then wrote M'r Smith about it; that there was too much warp in it. He wrote in reply that he would leave the matter with me, to do what I supposed was the best with it. I then called on M'r Appenfelder, and we came to the conclusion to cut half the warp out—that is, to lesson the warp just one half. After having a piece made—the second piece—I sent it to him at New York. He sent me word back that that wasn't what he wanted, and inclosing, I think, a piece of web, saying that it was more like that inclosed that he wanted, but wider, I think he said. He afterwards came on. I met him and told him the trouble about having the web made. Then he said, I guess we will drop that. Then he talked something more about the 48's, and I told him I didn't know where there could be any got. After some pleasant conversation I left him. This conversation occurred at M'r Heaton's, Walnut street, below 4th (south side), Philadelphia. This was, I think, in the early part of August.

Int. 42. When were you first called upon by any one else with reference to what you knew about elastic web; who was it, and how happened he to come to you?

(Objected to.)

Ans. It was about the first of the year (1870), or between Christmas and New Year. It was M'r Dodd. He stated that M'r Horstman had sent him to me.

Int. 43. Did M'r Smith or M'r Dodd, or either of them, say anything to you about testifying?

1246 (Objected to.)

Ans. At the last interview I had with M'r Smith he said, "Well, I suppose if I should want you as evidence in this case you would come." I think I told him that I would if I had proper notice. I also said a similar thing to Dodd.

Int. 44. Did you or your father ever make any shoe webbing after your father went out of business?

(Objected to.)

Ans. No, sir.

Int. 45. Did you receive any money from M'r Smith at any time? If yes, state the circumstances.

(Objected to.)

Ans. The first time I met him, after running about with him some time he tendered me $5. I said, "I don't wish to take any money from you or any recompense." He said, "Well, it's a hot day, you ought to b

paid." He insisted on my taking it. I told him I preferred not. He said, "Well, take it, and make me two or three reeds for it, such as your father made the corrugated web through." Then I replied, "Well, on those grounds I will take it." I made him the reeds and sent them to him to New York.

Int. 46. What became of the rubber and the letters you received from M'r Smith.

(Objected to.)

Ans. A piece of the rubber was annexed, I think, to my former deposition. The letter was either annexed or sent to M'r Dean.

Int. 47. Was there any other exhibit annexed to your said deposition?

(Objected to.)

Ans. Yes, sir; a note book in my own handwriting. There were in the book notes given by my father up to the time of his failure. Some of them were not paid.

Int. 48. Did your father ever go into business on his own account after his failure?

(Objected to.)

Ans. No, sir.

Int. 49. When the rubber warp was stationary, how many shuttles were used to a piece of fabric?

1247 (Objected to.)

Ans. Two to every piece.

Int. 50. How many sheds were there?

(Objected to.)

Ans. There were a shed above and below the rubber.

Int. 51. Was there a beat of the lay after each throw of the shuttle?

(Objected to.)

Ans. Sometimes there was and sometimes not; that is, in some goods one shuttle would go through one shed, and then the lay would beat, and then the other, and then the lay would beat. Sometimes they made goods with the shuttles (both) passing through the sheds before the lay came up.

Int. 52. Did the shuttles pass through the sheds simultaneously?

(Objected to.)

Ans. No, sir. First the top row was passed through and then the bottom row.

Int. 53. Was there any change or action of the warp threads or heddles between passing on the two shuttles?

(Objected to.)

Ans. Yes, there was a motion of the heddle with part of the warp at every movement of the shuttles. I think that is correct.

Int. 54. How certain are you of the use of the standing warp by your father?

(Objected to.)

Ans. I remember from seeing him rig this bar on himself to hold the rubber—I mean my father.

Int. 55. Would the failure of M'r Broeger to remember it (that is, the stationary warp) shake your confidence in your recollection?

(Objected to.)

Ans. No, sir; and I can give reasons why. I was about the premises and looms all the time while M'r Broeger was busy at his own work, and probably might not remember it.

F. DOEBLEY.

Subscribed and sworn to before me this 17th day of December, 1870.
W. GRIER HIBLER,
Examiner, &c.

1248 MONDAY, *December* 19, 1870.

Present, M'r Smith, complainant; M'r Dean, of counsel for respondents.

Deposition of John N. Wilkins.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. John N. Wilkins; age, 37; Philadelphia; merchant; importer and dealer in shoe manufacturers' goods.

Int. 2. How long have you been engaged in that kind of business, and where?

Ans. In Philadelphia, since 1849, as clerk and merchant together. I came to Philadelphia in 1849 as clerk with Isaac Barton & Co. Went into business with them in 1856, I believe.

Int. 3. Did the firm of Isaac Barton & Co. import, at any time, any elastic web for shoe gores?

(The complainant objects to all the testimony previously taken at this time, during Friday, Saturday, and during Monday, as being irregular, and not according to the 67th rule, made and provided for in such cases. That in December, 1869, the Supreme Court at Washington ruled that the court might order the defendants or complainants to take testimony; that the order to take testimony here before William Grier Hibler was between the parties of defendant and complainant by written stipulation. That M'r Dean, one of the parties to the stipulation, which was signed on the 12th ult., could have notified the taking of his testimony here at least two days before he did notify to take the testimony here. That he was in Philadelphia two days prior to the notice of taking his testimony. That complainant was in Philadelphia during said time. That if M'r Dean, the defendants' counsel, takes upon himself to take evidence before the same examiner, at the same time that he has stipulated for the complainant to take evidence before him, he must do so at his own risk. That the complainant objects and protests against the clerk appointed by W. Grier Hibler taking upon himself of taking up M'r Dean's
1249 testimony to deprive the complainant of putting in his own testimony, when he was legally, and according to the rules of the Federal court, putting in said testimony. That the said clerk appointed by M'r Hibler is again proceeding in taking M'r Dean's testimony contrarily to the advice and the written exhibit put on record of said W. G. Hibler, and no provision at hand for taking complainant's testimony. Complainant further objects against the taking of the testimany of Redman Cooper, Ferdinand Doebley, or John N. Wilkins, for the reason that they have been already fully examined prior to this time. Complainant further objects as irregular to any further testimony taken by M'r Dean, until such time as complainant has put in his testimony and completed all the testimony which he wishes to put in. That this is the last day for taking testimony given by the court of the district of Massachusetts in the matter; and complainant further objects to the power of the said examiner, W. G. Hibler, to appoint more than one clerk or one proxy to take evidence at one and the same time for complainant and defendant in the same cause. That neither the ruling of the court, nor law, nor equity, compels a man to be at two places at one time.

Counsel for the defendant, in reply to the complainant's objection as to the notice, calls attention to the fact that the notices of complainant to defendant and of defendant to complainant are of the same date and were delivered simultaneously, and that there is no difference as to the rights of the parties in the stipulation. That at the time of the taking of the testimony of Redman Cooper, but after said Cooper had been sworn and called as a witness, complainant claimed to be under examination, when in fact he had testified twice, giving two separate depositions, which were completed, and in the presence of the examiner's clerk. The defendant's counsel requests the examiner to make record or entry of this fact of his own knowledge.

The clerk of the examiner (E. F. Pugh) certifies, as requested, that there came to him from M'r Phillips, who had been acting as clerk for the examiner, two depositions signed by M'r Smith, the complainant, purporting to have been taken on the 16th day of December, 1870, and apparently completed.

1250 Counsel for the defendant also says he is informed that said Exhibit A. Z. (E. F. P.), W. G. Hibler, examiner, was obtained by M'r Smith of the examiner, while at his house, by the representation that at the taking of the testimony of Redman Cooper complainant was actually under examination, said examination being interrupted by the taking of said Cooper's testimony, and requests the examiner to make a note of said fact.

Counsel also states that the complainant, while offering to testify again when Cooper's testimony was being taken, was, at the same time insisting upon an adjournment until the next day. As to the objection that the testimony of Cooper, Wilkins, and Doebley has already been taken, counsel will proceed no further with the testimony of said Wilkins, and will withdraw the testimony of Cooper and Doebley, taken at this time, if complainant will stipulate that said former testimony of said witnesses may be used at the trial of these causes without the objection that it was not taken before a proper officer. As to the objection that there cannot be two clerks taking testimony at the same time, the counsel says he has made arrangements with M'r Hibler to have M'r Pugh act as clerk in the taking of defendants' testimony, as M'r Phillips had been previously appointed mainly to take complainant's testimony. Counsel has no objection to the appointment of any additional clerk or clerks to take complainant's testimony, but the complainant having, in fraud of the objects and purposes of the stipulation under which this testimony is being taken, come to Philadelphia, away from most of the defendant's witnesses, and undertaken to put in a prima-facie case in said suits, it is impossible, in the short time remaining, for the defendants to put in any testimony, if they are compelled to yield to the unreasonable demands of the complainant. Counsel also calls attention to the fact that in the room below there is a person appointed to act as clerk and take any testimony the complainant may see fit to produce. Counsel also says that he shall not hereafter take notice of complainant's objections, or the statements he may put on record, and by not doing so is not to be taken to assent to their correctness; the fact being that the complainant's statements constantly put on record being almost invariably incorrect.

1251 Complainant replies to the rambling statement of counsel that he takes it' view as a matter of special pleading, flimsy in pretext and erroneous in statement. That on the 29th day of November, 1870, his honor Judge Shepley, judge of the circuit court of the district of Massachusetts, appointed twenty days from date for defendants and

complainant to take further testimony, and defendants' counsel has had his own time and opportunity to elect where and at what time and in what place he would take his testimony. He chose to do so in Philadelphia, at the same time and by the same examiner that complainant had chosen and appointed to take his testimony. His argument that the stipulation was signed simultaneously is not correct in fact. Before the stipulation could have effect or be in force it must be signed and agreed upon on the part of complainant, and the defendants' counsel, M'r Dean, could not have chosen and given notice to take evidence on the same date and same hour under M'r Hibler, as examiner, except he had previously signed the stipulation and consent for the complainant to take evidence under said examiner. Complainant further states that during Friday and Saturday the examiner has only given him three hours to put in his evidence, a half hour on Friday and two hours and a half on Saturday. That the evidence put in on Friday and Saturday by complainant was but a part of complainant's evidence. That defendants on Friday, in spite of complainant's objection thereto, put in the evidence of Rudolph Broeger. Complainant further states that on Friday evening, when the examiner commenced with the evidence of Redman Cooper for defendants, he was ready and willing to go on with his evidence. In reply to the objection of counsel complainant came to Philadelphia, out of the way of defendants' witnesses, it is false and not true. That complainant came to Philadelphia for the convenience of taking testimony in his own case, without any consideration, either one way or another, to the convenience or inconvenience of defendants. At the time of the examination of Redman Cooper, on Friday evening, complainant's rights in the matter and objections to the same were treated with contempt by the clerk appointed by M'r Hibler. That complainant went to M'r Hibler's house and stated the matter of fact to him just as it was, and that M'r Hibler wrote out for complainant the Exhibit A. Z., requesting him to bring it to the clerk taking the testimony, and request the clerk to attach it to the beginning of Redman Cooper's testimony. Complainant brought said exhibit to the clerk taking such testimony, and re-
1252 quested him to attach it to the beginning of Cooper's testimony, as M'r Hibler had requested, but the said clerk refused to do so. In answer to the remarks about making stipulation regarding o admitting or not admitting testimony, the matter is in the hands of com plainant's counsel, and shall not interfere with it at present. Complainant again protests against any further testimony being taken in the case on the part of defendants until complainant's testimony is all in, as complainant shall oppose such testimony before the court being admitte d in the case, being irregular; and, further, that it is impossible for omplainant to attend to the taking of defendants' testimony and cross-e amination of the witnesses, he being all his time engaged in putting in his own testimony. In answer to his objection that there is a clerk appointed and waiting down stairs to take the examination of complainant, complainant replies that at the commencement of entering these objections between complainant and counsel on the record complainant did did not know for a certainty that there was any clerk provided to take his testimony. Complainant would further enter on the record at this time of the unmanly and ungentlemanly conduct of M'r Dean, counsel of the defendants, that during the examination of witnesses in these suits—as I think, more than fifty days—the counsel has pursued the same unjustifiable method of taking evidence at one and the same time as complainant, to injure this complainant and frustrate him in every orm and manner, both legal and illegal, to injure this compl inant in

putting in his testimony; that on the 31st of March last, while taking evidence before the said William G. Hibler, in Philadelphia, counsel opened cases that the evidence had already been closed by written stipulation; that said counsel requested said Hibler to direct said evidence to the clerk of the circuit court of New York, inclosed in an envelope directed to him, in care of George Gifford, 34 Beach street, New York; that said counsel for defendant, M'r Dean, opened the same evidence and carried them away into Massachusetts, unsealed, and sent them to the Glendale Manufacturing Company, at Easthampton, Mass., and such evidence had not been returned to the clerk of the court a short time ago.)

Ans. to int. 3. They did.

Int. 4. How early?

Ans. In 1851, or the spring of 1852.

1253 Int. 5. What kind of goods were they, and were those you imported the first you knew to be imported in the market?

Ans. They were a union gore; that is, silk face and cotton back, but were not the first foreign goods that we knew to be in the market.

(The clerk of the examiner (M'r Pugh), with reference to the charge that he interfered with the examination of M'r Smith and refused to obey the order of M'r Hibler, in his own justification, states that, as to the first charge, the note previously made sufficiently explains his conduct; as to the second, he conceives that M'r Smith is mistaken or has forgotten, for that the clerk, so far from rejecting the order, marked it as an exhibit and attached it to the depositions, but, conceiving that M'r Hibler had been misinformed as to the facts, he exercised his discretion so far as not to interrupt the examination of the witness on the stand, in order to admit M'r Smith to testify.—E. F. PUGH.)

Int. 6. Was there any difference in time between the importation of the union goods and the single goods?

Ans. There was no difference in time between the union goods and the all-silk goods, of which complainant's Exhibit V is a sample.

Int. 7. Describe said goods.

Ans. The union gore, I think, we imported first, but there was not more than a month or two difference. The union gore, in being cut for shoes, would curl up, while the all-silk would not. Some time after we had imported these goods M'r Smith called on us with a sample of union goring, which he claimed to be much superior for the reason that it would not curl up, being woven more like the all-silk that we had been importing.

Int. 8. What further conversation did you have with said Smith regarding woven and elastic shoe-goring; and did he claim to have a patent? If yes, what for and when?

Ans. He was frequently at our store offering his goods for sale, but never claimed to have a patent until after Horace H. Day had substantiated his patent for vulcanized rubber. I think the first time that I heard Smith say he had a patent for the goods was about 1856 or 1857. He then claimed to have a patent for machinery on which the union gore was made, and selected from our stock and explained to me the kind of goods which could only be produced on his invention,

1254 which was the union gore, silk face and cotton back. He particularly selected the union gore, and said that his patents covered these goods only, throwing aside the all-silk—like Exhibit V—and lisle thread woven in the same way, as not being his invention. The object was, the union gore could only be made on his machine.

Int. 9. How frequent were your conversations with said Smith; and

did he on any occasion have samples of web with him, and what did he say about them?

Ans. He would generally call on us whenever in Philadelphia—say three or four times yearly—possibly more; and on one occasion exhibited samples which he had purchased from Isaac Barton & Co., Paine & Co., Johns & Son, and others, which he claimed to be goods made under his patent; which goods were, as above stated, silk face and cotton back, and no other kind.

Int. 10. You have said that he claimed those goods to be under his patent, because he asserted they could not be made except on his machinery. Did he ever place his claim upon any other ground?

Ans. Not at that time that I recollect, until within the last year or so. He used to tell me that Day had the patent for vulcanized rubber, and that he had the patent for the machinery. I mean by that the machinery for making the union gore.

JOHN N. WILKINS.

Subscribed and sworn to before me this 19th day of December, 1870.

W. GRIER HIBLER,
Examiner, &c.

Deposition of William I. Horstmann.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. You will please state your name, age, residence, and occupation.

Ans. William I. Horstman; age, 51; Philadelphia; occupation, merchant and manufacturer of narrow textile fabrics, trimmings, and military goods.

1255 Int. 2. How long have you been engaged in that business?

Ans. Since the fall of 1834.

Int. 3. What is the extent of your business?

Ans. We have over a half a million invested in our business.

Int. 4. Did you know Solomon Doebley?

Ans. Yes, sir; he was a reed maker. He often made reeds for father and for us. He commenced the weaving of elastic suspender webs some time previous to 1840, I think; of course I can't fix the date precisely. He was an ingenious man, and showed it in manufacturing the gum. The machine for wrapping the thread around the pure gum was his own invention.

Int. 5. Can you describe any of the goods made by said Doebley at that time?

Ans. They were suspender webs, made with pure rubber, and cotton warp and filling. The fabric was made with warp threads between each strand of rubber, binding the filling on the two sides of the web; no warp threads above the rubber, made like complainant's Exhibit V, Exhibit Broeger, No. 2, and the body of Doebley Exhibit 3. Previous to 1848, probably as early as 1844, he made suspender web having a silk face and cotton back; that is, with two shuttles, one working silk and the other cotton.

Int. 6. Did you ever sell him any silk?

Ans. Yes, we several times sold him train silks for making this kind of goods. Our books are all destroyed prior to 1850.

Int. 7. Were you often in his factory?

Ans. Some half a dozen times in the weaving department, but in the part where he made his reeds and heddles oftener.

Int. 8. Did you ever send any persons, inquiring for information, to Ferdinand Doedley, the son of Solomon Doebley?

Ans. I referred M'r William Smith to M'r Doebley for information in regard to the weaving of rubber, Solomon Doebley being the first person I knew of weaving elastic goods; also one other person, who called about a year ago.

Int. 9. Did M'r Smith ever say anything to you about any samples being made?

Ans. Yes, sir; he said that M'r Doebley was to make him some
1256 samples such as his father formerly made. He asked us if we would furnish Doebley with cotton to make these samples, on his account.

Int. 10. How early did he make the suspender webs described in the early part of the answer to question No. 5?

Ans. I think it was as early as 1840.

Int. 11. Was there any difference between said web and complainant's Exhibit V, so far as the arrangement and relation of the rubber cords and warp and filling threads are concerned?

Ans. They were of the same style of weaving, but the quality of the goods was different.

W'M I. HORSTMANN.

Subscribed and sworn to before me this 19th day of December, 1870.

W. GRIER HIBLER,
Examiner, &c.

2.30 p. m.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant, in person.

M'r Smith requests the examiner to note that he will ask to take the testimony of all the witnesses examined this day in cross-examination at any time before 12 o'clock to-night, de bene esse.

Deposition of Henry G. Gurney.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry G. Gurney; age, 54; residence, Newark, N. J.; occupation, a baker. I was formerly in the silk manufacturing business.

(M'r Smith leaving the room, M'r Dean notifies him that inasmuch as M'r Smith refused to permit the examiner's clerk to put down any objection to testimony unless he went down to the room where he was giving his testimony, and was personally present, M'r Smith must also consider the difficulty of procuring witnesses who have left, and
1257 he must have some regard thereto, though M'r Dean will do the best he can to accommodate him. M'r Smith replies that M'r Dean has no right to put on any witnesses at all, but that he has a right to cross-examine the witnesses at any time before 12 o'clock to-night. M'r Dean says that he gathered from M'r Smith's objection that the defendants were to take evidence at their own risk, and that he did not intend to be present, and that he had been running down to make objections while M'r Smith was taking testimony in the room below.)

Int. 2. When were you engaged in the silk manufacturing business, and did you ever make any elastic goods?

Ans. I was engaged with my father and brother from 1842 to 1867. My father died in 1861, and my brother in 1865, I think. I made elastic

goods about 1847, I think, to weave elastic goods, and some few years after, up to 1850, I think.

Int. 3. Did you ever use a stationary warp in making elastic goods? And, if yes, where and when?

Ans. During the period from 1847 and afterwards, at Newark. We had the rubber warp stationary in a certain position, by a stationary heddle.

Int. 4. Describe how you worked it.

Ans. We worked the warp in the ordinary manner, by rising and depressing the other warps, excepting the rubber, which other warps were between the rubber threads, and passed up and down between the rubber cords. They were worked by treddles. High lease loom. We used either one or two shuttles. If we used two shuttles, silk on top and cotton at the back, and then a beat of the lay.

Int. 5. Did you have more than one shed at the same time?

Ans. There was one above and one below the rubber.

Int. 6. Did you so work it in making elastic web?

Ans. Yes.

Int. 7. Did you, in making such web, use two kinds of filling?

Ans. Yes; silk at top and cotton back.

Int. 8. What covered the rubber cord at top and bottom?

Ans. Silk on top and cotton at bottom.

Int. 9. Silk filling, warp, or both?

1258 Ans. The silk filling at the top and cotton filling at bottom, bound to the rubber by binders between the rubber cords.

Int. 10. What became of said goods?

Ans. They were sold to M'r Dodd in the first place, and to the firm of Dodd & Wakeman afterwards, when that firm was formed.

Int. 11. Did you make any elastic suspender web with one shuttle in that way?

Ans. Yes, sir.

Int. 12. How was that done?

Ans. By passing the shuttle under and over the rubber.

Int. 13. Did you make any other goods with a stationary warp?

Ans. Yes, sir.

Int. 14. What kinds?

Ans. Corded silk beltings. We had a stationary corded cotton warp, and a silk warp, acting as binders between the cords, through which we passed the silk filling under and over.

H. G. GURNEY.

Sworn to before me this 19th day of December, A. D. 1870.

W. GRIER HIBLER,
Examiner, &c.

Redman Cooper (now, December 19, 1870, 3.30 p. m.) makes his appearance and says, that at M'r Dean's request he called on M'r Smith, who is giving his evidence in the room below, and that M'r Dean requested M'r Smith to cross-examine him (M'r Cooper) at this time if he so desired. M'r Smith replied that he was at his own testimony. M'r Dean then stated to him that witness was very unwell and not able to stay there. M'r Smith stated that he did not intend to take up his time, and if he got through in time, he would examine witness. M'r Cooper then told him that he would have to bring a certificate from his physician that he was not able to stay or come. He said that was nothing to him, that he would not do it now. M'r Dean asked him if he would fix a

time, and, if so, witness might be induced to come at the time he should name. He said he would not.

REDMAN COOPER.

1259 *Deposition of Frederick W. Appenfelder.*

Direct examination by M'r Dean, of counsel for respondents:

I am 34 years of age; trimming manufacturer; am foreman of John Goldthorp's factory. I have been acquainted with weaving about twenty years. I made India-rubber suspenders fifteen years ago. In Germany, not in this country. I did not make any elastic webbing a year ago last summer, only a little sample. M'r Smith came up into our factory alone. M'r Goldthorp sent him. M'r Goldthorp came up after him. M'r Goldthorp said, "Fred, have you got any loom for that gentleman; he would like to make a little sample on the loom." I said, "Yes, sir; I have a loom." I showed him all the looms we had, and told him he could pick out the one that he liked and that he thought he could use for it; and so he looked at the looms and went away again. He came back a day or two days later, and brought a traveling bag along, in which he had his cotton. I showed him the warping mill, where we make our warps, because he said he wanted to make a warp. He commenced a warp and I told him how wide our frame was. After he had commenced a warp I went and asked him what he was willing to make. He says he wants to make a thing that was made twenty years ago. That's all the answer he gave. After the warp was made he wound it upon spools, warping spools, of our factory. Then he went to the looms again, and he found he was too stout to get in the loom to make it; the looms are more for girls; so he asked me if I was willing to make it for him, and he told me all about it, how he wanted it. So I said, yes, I could make it, and I told him that I made this kind fifteen years ago, out in Germany. I told him I could not make it on my own account, because my time was not my own; that he must speak to M'r Goldthorp in the office. So he went off again the same day. At another day he came back with M'r Doebley, or M'r Doebley came in shortly after him. Then they brought the rubber and the reeds, because our reeds were too
1260 fine. I showed them a loom where they could put the warp in, because I did not know that I was to make it. So both went off again, and M'r Doebley came back again the same day. M'r Doebley asked me, "Couldn't you make that sample?" He said M'r Smith asked him to get some man, but he thought that he could not find any. I can't tell exactly what he said now. Then I said, "Yes, sir; I can make it; only speak with M'r Goldthorp first, down-stairs; it's not my time." He said he would fix it all right with M'r Goldthorp. He told me how he wanted it, and said it was like the very cheap, common suspenders of old times. I said I understood, and would make it. The kind that they wanted was the kind would pucker between the rubbers. I made a short piece, and I found out that wasn't the kind they wanted. I found the warp was much too thick, and so I took some of the warp out. M'r Doebley came back again, and I had a sample made, and asked him if that was right. He said, "That's something like it; I think that will do." He thought it couldn't be done because either the reed or the rubber, I don't remember which, was wrong. M'r Doebley took the sample and said he had to send it off by mail. That's all I know about it.

F. WILHELM APPENFELDER.

Subscribed and sworn to before me, this 19th day of December, 1870.

W. GRIER HIBLER,
Examiner, &c.

PHILADELPHIA, *January 19th*, 1871.

Present: William Smith, esq., the complainant; Benj. Dean, esq., of counsel with respondents.

Deposition of Redman Cooper, recalled.

Cross-examination by M'r Smith:

Cross-int. 1. What do you call a union shoe goring?

Ans. A silk face and cotton back.

1261 Cross-int. 2. In the union web that you said you imported, in what direction does the warp in the cotton back lay, longitudinally or at right angles across the fabric?

Ans. I don't know anything about that, as I am not acquainted with the manufacturing of the goods.

Cross-int. 3. Did you ever notice that under the cotton back there was silk weft the same as on the face of the goods?

Ans. No, sir.

Cross-int. 4. Was you accustomed to the handling and selling of such goods as the union web at that time?

Ans. I rarely ever handled or sold them.

Cross-int. 5. Of how early a date have you papers, letters, memorandum-books of your business affairs, of your present firm?

Ans. I think from January 1, 1867.

Cross-int. 6. Have you got books, paper, memoranda, &c., of your previous firms, and how early have you such papers and books?

Ans. I can't answer that without first examining. We have some books, I think a ledger and journal, from 1852. Invoices and all those things were, I think, sold for waste-paper in 1867. I am not sure whether they were all sold or not. We moved in 1867, and we sold all books as waste-paper which we thought would be of no use.

Cross int. 7. When you imported, as you said, elastic webs for shoe-goring in 1852, had you bills of lading?

Ans. We always had bills of lading of all goods received, or I had better say we usually did.

Cross int. 8. Have you any bills of lading for elastic shoe-goring from 1850 to 1852?

Ans. No, sir; we don't see one bill of lading in a hundred after it goes to the custom-house.

Cross-int. 9. Are you not aware that there comes two bills of lading with imported goods?

Ans. Yes, sir; the ship keeps one, I believe, and the one we get goes to the custom-house. I am now speaking of English bills of lading.

Cross int. 10. Will your books show that you imported elastic fabrics for shoe-goring, or have you any papers that will show that fact from 1850 to 1852?

1262 Ans. I have already said that we have no books of any description, letters, or anything else, to the best of my knowledge, previous to 1852.

Cross-int. 11. Have you any books, letters, or papers, that will show that you imported such goods in the year 1852?

Ans. I do not know.

Cross-int. 12. Of whom did you purchase such goods abroad, as above described?

Ans. A. L. Henry & Co., Manchester, England, and, I think, from Stansfield, Brown & Co. I only give the years from 1850 to 1852 from my belief, as I only speak from memory.

Cross-int. 13. What custom-house was the goods imported through?

Ans. I can't tell that without bills of lading or entries.

Cross-int. 14. Do you know what duty you paid at that time?

Ans. No, sir.

Cross-int. 15. (Complainant offers witness a letter, marked Exhibit B Y, W. G. H., Examiner, and asks if he knows the signature to it.)

Ans. Yes, sir; I recognize it. It is my handwriting.

Cross-int. 16. Do you keep a letter-book?

Ans. Yes, sir.

Cross-int. 17. (Complainant calls for the correspondence between Faxon, Elms & Co., of Boston, and Armstrong, Wilkins & Co., 417 Arch street, Philadelphia, during September, October, and November, 1868, relating to the patents of complainant. Also any bills or invoices or letters of importation of elastic fabrics for shoe-goring, during the years 1850, 1851, and 1852.) I want the production of what is called for before the close of this cross-examination.

Ans. The only letter I find to them is dated Oct. 8th, 1868, to Faxon, Elms & Co., which is a copy of Exhibit B Y. I can find no other letter in our letter-book to them relating to the matter whatever. In reply to that letter, I received a letter dated Boston, October 9th, 1868, which is marked Exhibit C X, W. G. H. In reply, we wrote to M'r Smith, on October 16, 1868, as follows:

PHILADELPHIA, *Oct. 16th*, 1868.

M'r W'M SMITH, *Boston:*

DEAR SIR: We a few days since received some papers from 1263 Messrs. Faxon, Elms & Co., and handed them to our attorney. He has not yet had time to examine the subject fully, and asks for a few days longer to thoroughly examine them before he gives an opinion; as soon as he does we will write you again; in the mean time we want the whole matter postponed.

Yours, respectfully,

ARMSTRONG, WILKINS & CO.,
80 *Cliff street, box* 3214.

I think the names of Faxon, Elms & Co. should have been M'r Smith, because I find no letters to them in regard to it. And by looking over our files I find none from them. They might have been received and passed over to our attorney and not returned. I have no papers, books, or anything to show that we imported elastic fabrics in 1850, 1851, or 1852. I can find no papers on the subject. My impression is, that when we moved in 1867 we destroyed everything of that kind.

Cross int. 18. What was the name of your lawyer, and what was his opinion in regard to my patents?

(Objected to.)

Ans. William S. Price. His opinion was that he had no valid patent.

Cross int. 19. When I called upon you in the fall of 1868, did you not say that if any importers in Boston took out licenses under my patent, you would do it? And was not the correspondence of Faxon & Elms in consequence of that promise to me, and did you not write to that effect to M'r James C. Elms, of Boston?

Ans. I think I did not say that I would take out a license. I told M'r Smith, on one occasion, that if all the parties in Boston took out licenses the same as they did in Day's case, we would too, for we did not want to infringe anybody's patent. To the best of my knowledge there was correspondence with James S. Elms about it.

Cross-int. 20. Will you swear that you did not say to me, that if any importers in Boston took out licenses under my patent, you would do the same; and did you not write to Elms, or Faxon & Elms, that if they took out licenses you would do so also?

1264 Ans. I think I never did, to the best of my knowledge and belief.

REDMAN COOPER.

Sworn to and subscribed before me this 19th day of January, 1870.

W. GRIER HIBLER,
Examiner, &c.

Exhibit B Y.—W. G. H., Examiner.

PHILADELPHIA, *October* 8, 1868.

Mess'rs FAXON, ELMS & Co., *Boston:*

GENTLEMEN: M'r Smith was here a few days since about a patent he claims to have for man'f'g webs. If you can send us a copy of the patent we shall be glad to receive it, to show our attorney, and if he thinks it a valid patent we will cheerfully come into his terms, for we do not wish to infringe on any one's patent. If you will send us a copy of the patent we will return it to you if you wish. Your prompt attention will oblige,

Yours, respectfully,

ARMSTRONG, WILKINS & CO.

Exhibit C X.—W. G. H., Examiner.

BOSTON, *October 9th*, 1868.

Mess'rs ARMSTRONG & Co.:

I enclose you a copy of the importers' license, which you will please except by the 18th of this month, so that I may receive it on the 20th inst.; all other regulations will be governed according to Boston importers, of which you can be notified through Faxon & Elms.

Yours, respectfully,

W'M SMITH.

My address in N. Y. is 80 Cliff street, box 3214.

1265 *Deposition of Ferdinand Doebley, recalled.*

Cross-examination by M'r Smith, complainant:

Cross-int. 1. What is your age?

Ans. I am in my 47th year; I will be 47 next July.

Cross-int. 2. What knowledge have you of the fact that you are in your 47th year?

Ans. The only answer I can make to that is that I can recollect since 1827. That was previous to coming to this country. I came to this country in the early part of 1829. I can recollect a circumstance that occurred before I was three years of age. I have seen the record of my birth recorded in the bible my mother has, where it stated that I was born on the 30th day of July, 1824.

Cross-int. 3. Have you got that bible, or is it accessible to you at the present time?

Ans. Not to my knowledge. I presume my sister or brother-in-law took it, as my mother was living with them.

Cross-int. 4. What port did you arrive at in 1829, and where did you come from?

Ans. Arrived at the port of New York and sailed from Havre.

Cross-int. 5. How long did you remain in New York after you arrived?

Ans. We arrived on the 12th day of May and left in August in the same year.

Cross-int. 6. What was your father employed at in New York from May to August?

Ans. Making reeds.

Cross-int. 7. In what part of New York did your father reside?

Ans. I think it was Beekman street. My father came to New York about a year before mother and the children did.

Cross-int. 8. Did your father make reeds on his own account, or did he work as a journeyman for some one else?

Ans. At the time I speak of he was working for himself; that is, while I was in New York.

1266 Cross-int. 9. Where did your father remove to when he left New York?

Ans. He came to Philadelphia.

Cross-int. 10. After he came to Philadelphia how long was it before he went into business making reeds?

Ans. A very short time.

Cross-int. 11. How short a time, and where did he reside at the time in Philadelphia?

Ans. A few weeks. It might have been six, and it might have been three. Before he commenced we boarded at Ziegler's hotel, Callowhill and Old York Road. He rented a place out at Rising Sun, and we moved there and he had his machinery put up.

Cross-int. 12. How long did you board at Ziegler's hotel before you moved?

Ans. It was from three to six weeks.

Cross-int. 13. When, for the first time, did your father go into the weaving business of making suspenders in Philadelphia?

Ans. About the year 1840 or '41; I think '40 the first commencement.

Cross-int. 14. When did your father first begin to make any gum-elastic suspenders or any gum-elastic fabrics?

Ans. At the time named above he commenced with rubber.

Cross-int. 15. Where and of whom did he purchase the India rubber?

Ans. The first I recollect of his purchasing was of a party in Second, below Chestnut, street, at the corner of Lodge alley, now called Gothic street.

Cross-int. 16. Can you state his name?

Ans. I really forget the name, but it was a drug house.

Cross-int. 17. In what condition was the rubber when he purchased it?

Ans. It was in the shape of a bottle or soldier's canteen. It was called bottle rubber.

Cross-int. 18. Please describe how your father prepared that rubber to make it ready to put it in the loom for weaving.

Ans. It was by cutting the bottle in two or in half, leaving two
1267 circular blocks. Then it was put into a press and pressed flat. Then after that the edges were trimmed to a square edge. Then it was put on a machine and cut into ribbons, and after that it went to another machine and was cut into threads by a number of circular knives. Then the rubber was put together, hammered or spliced. We used a hammer on a flat piece of iron that spliced it. Then it was put

on and stretched and reeled to take the elasticity out of it. Then it was taken from the reels and was ready for the warp preparatory to weaving.

Cross-int. 19. How did he restore the elasticity of the rubber after it was woven?

Ans. The first he did of that kind was with a simple flat-iron heated. I did many a yard of it myself.

Cross-int. 20. What kind of a loom was that with which you said you made goods with a standing warp?

Ans. It was a loom worked by hand. The weaver worked it with treddles; the treddles were worked with the feet, and there were two rows of shuttles.

Cross-int. 21. How many webs did you make with the loom just described at one time?

Ans. At one time I think there was ten or twelve webs in it. Then it was changed, after which there was only four or six webs, what made the shoe web.

Cross-int. 22. In the loom just described what was the width of the slot in the lay before the change?

Ans. I judge this was two to two and a quarter inches. It would take in a reed of two and a quarter inches, I think.

Cross-int. 23. Please describe how the loom just referred to was mounted in regard to her lambs, heddles, &c.

Ans. I could not describe it accurately, as I had nothing to do with the mounting; father had a man employed to mount the looms.

Cross-int. 24. Do you call yourself an expert in weaving and the machinery connected therewith?

Ans. No, sir; I do not call myself an expert at weaving and the machinery connected therewith, except some parts of it.

Cross int. 25. What part do you consider yourself an expert in machinery connected with weaving?

1268 Ans. Doubling and twisting yarns for that kind of weaving we did. I understand the making of reeds and heddles for weaving.

Cross-int. 26. Is that all you understand about the machinery of weaving?

Ans. There are different grades of weaving that I have not a knowledge of. I don't pretend to be an expert. I have not been among weaving since 1852; that is, the kind of weaving we are speaking of here—webbing.

Cross-int. 27. How many treddles did the weaver use in making the suspenders in the loom just described?

Ans. There were some goods made with two treddles; some with four.

Cross-int. 28. What kind of goods did those with two treddles make in suspenders?

Ans. With two treddles were made some that were called plain goods.

Cross-int. 29. How many heddle shafts had you in the goods made with two treddles?

Ans. I think there was only what we call two leaves. I am not certain about that.

Cross-int. 30. What kind of suspenders did you make when you had four treddles in the loom?

Ans. I couldn't describe them exactly what kind of goods; they were different from those with two treddles—different fabric.

Cross-int. 31. How many leaves had you in the heddles in making the goods with four treddles?

Ans. We had four in some of them. The looms throughout the place had different numbers of heddles in them.

Cross-int. 32. What were your greatest number, and what were your least number, of leaves when you worked with four treddles in the loom just described?

Ans. To the best of my recollection, I don't think we had more than four, or less than two, in that particular work.

Cross-int. 33. Do you mean when you worked with four treddles?

Ans. I did not understand the previous question in that way. I do not know of having more than four leaves in when we had four treddles.

1269 Cross-int. 34. What kind of a selvedge did you make to these goods with two and with four treddles?

Ans. I think it was plain selvedge; I am not certain about that; the two leaf was, I know.

Cross-int. 35. What do you call a plain selvedge?

Ans. The sample of shoe goring that was annexed to my deposition is what I call plain selvedge. The sample, I said, was made by my father.

Cross-int. 36. You speak that in the making of these goods they were made with two rows of shuttles, with rack and pinion. How were they connected together—the top and bottom rows of shuttles—and how did the weaver propel them across the fabric?

Ans. I don't understand what you mean by connecting the shuttles.

Cross-int. 37. Do the top row of shuttles act independently of the bottom row of shuttles, and the bottom row of shuttles act independently of the top row of shuttles?

Ans. Yes, sir; they acted independently of each other; that is, you could use either row independently of the other; that is, work first one row, then the other.

Cross-int. 38. How did the weaver propel the top row of shuttles across the fabric?

Ans. By hand; that is, by taking hold of the handle on the top of the lathe that propelled the rack.

Cross-int. 39. Was there any frame with projections attached to said handle that came down to the side of the top row of shuttles?

Ans. No, sir; there was nothing of a frame which throws the shuttles in an ordinary loom; that is not needed in a loom with rack and pinion.

Cross-int. 40. Was the bottom row of shuttles propelled in the same manner as the upper ones?

Ans. Yes, sir.

Cross-int. 41. Was the bottom row of shuttles propelled from the top of the lathe the same as the top row of shuttles?

Ans. It was propelled from the top of the lathe.

Cross-int. 42. About what distance was it from the top rack in the lathe to the bottom rack in the lathe?

1270 Ans. Well, I couldn't tell the distance exactly; I never measured the depth of them. It has been so many years since.

Cross-int. 43. Can you give any guess at the distance?

Ans. Not to be accurate. It must go over top and bottom of the reed.

Cross-int. 44. Can you give no description of the distance at all?

Ans. It might have been six inches from top to bottom. I wouldn't be positive about that at all.

Cross-int. 45. How was the connection made from the handle at the

top of the lay to the bottom rack that propelled the bottom row of shuttles?

Ans. I think it was connected with an iron rod from the handle.

Cross-int. 46. How did that iron rod pass down from the handle to the bottom rack?

Ans. Through a slot.

Cross-int. 47. Describe that slot, in what part of the lathe it passed down.

Ans. It was a slot cut through the top part or portion of the lathe.

Cross-int. 48. Did the rod pass down perpendicular from the handle to the bottom rack?

Ans. It passed down perpendicular, but had an angle in it connecting with the bottom rack.

Cross-int. 49. Whereabouts in the rod did the angle commence?

Ans. At the rack the bend was.

Cross-int. 50. In these two handles you have described at the top of the lathe, whereby the weaver propelled the shuttles, whereabouts on the top of the lathe were they fixed, and were they opposite each other on top or some distance apart; and, if apart, how far apart?

Ans. They were about midway of the lathe; they were not exactly opposite each other. I could not specify the distance apart, but about far enough to throw the shuttle across the web.

Cross-int. 51. In throwing the top row of shuttles, was the handle perpendicular over the rack that moved the shuttle?

Ans. I think it was.

Cross-int. 52. You speak, in your direct examination, of the 1271 shuttles passing through simultaneously. Please describe how that operation was performed.

Ans. I never said they passed through simultaneously. My recollection is that I said they first passed one row of shuttles and then the other, and so on.

Cross-int. 53. When you altered that loom to weave shoe goring, what alterations did you make in it to make shoe goring?

Ans. Reduced the number of shuttles to make wider goods.

Cross-int. 54. Did you make any alteration in the frame of the loom?

Ans. Not that I recollect.

Cross-int. 55. How many pieces of shoe goring did you weave at one time when it was altered for shoe goring?

Ans. From four to six, I think. I think four.

Cross-int. 56. Was the lathe shuttles and racks constructed in the same manner as just described in making the shoe gore?

Ans. The shuttles were made larger and the spaces larger. The whole lathe was reconstructed in the arms, and so on.

Cross-int. 57. In all other respects was it the same?

Ans. No other difference that I think of except in dimensions.

Cross-int. 58. Was this gore for shoe webbing made of native rubber?

Ans. Yes; it was pure rubber—native rubber prepared as I have described.

Cross-int. 59. What became of that loom when you gave up making shoe goring?

Ans. It was turned into a common swivel loom worked with a bar; a single-shuttle loom.

Crosss-int. 60. When you was speaking of throwing one shuttle across the fabric and then the other, when you threw the top shuttle and that

went across the fabric, did you then throw the bottom shuttle across the fabric, repeating the same operation?

Ans. Yes, sir.

Cros-int. 61. What other kind of fabric did you make with the standing warp?

Ans. I don't recollect any except some webbing father tried with silk top and cotton bottom.

1272 Cross-int. 62. Did your father make much of it?

Ans. Not a large quantity; but some from time to time.

Cross-int. 63. What kind of loom was it that he made it in?

Ans. It was made on this double shuttle loom I have spoken of.

Cross-int. 64. Was it suspender webbing or shoe goring?

Ans. It was narrow web, suspender size.

Cross-int. 65. Did you ever make any goods with a standing warp with the Jacquard machine?

Ans. I don't recollect that we did; we made figured work with the Jacquard loom.

Cross-int. 66. Can you say whether you did or did not make any goods with the standing warp in the Jacquard machine?

Ans. I could not say positively.

Cross-int. 67. You were speaking in your direct examination of your reason for ceasing the making shoe goring, was the introduction of cemented corrugated goods in the market; please state what goods they were, and who used them in Philadelphia.

Ans. In the first place, I don't think I ever said that it was on account of the cemented goods being introduced; the reason for quitting was that people would not pay the price that was asked for it.

Cross-int. 68. Did you see any cemented goods in the market during the time you were making shoe goring for Congress boots?

Ans. The first I saw in New York City, at M'r C. L. Ross', on Maiden Lane, between Front and Water, near the dock, I think.

Cross-int. 69. Then these cemented goods did not come in competition with your goods in Philadelphia, did they?

Ans. Yes, they did. I saw them here and in New York.

Cross-int. 70. Were they represented as foreign or domestic goods?

Ans. Domestic goods. M'r Ross told me they were made in Jersey.

Cross-int. 71. What price did your father charge for the shoe goring?

Ans. I forget.

1273 Cross-int. 72. Did your father make any shoe goring silk face and cotton back?

Ans. Yes, sir.

F. DOEBLEY.

Sworn and subscribed before me this 19th day of January, 1871.

W. GRIER HIBLER,
Examiner.

Deposition of William J. Horstmann, recalled.

Cross-examination by M'r Smith:

Cross-int. 1. How do you fix the date when you first visited Solomon Doebley's place of business?

Ans. I entered business in 1834, and he made reeds for us at that time.

Cross-int. 2. When did you leave school?

Ans. In 1834.

Cross-int. 3. Did you visit Europe after leaving school?

Ans. Yes, in 1838, and returned in 1839.

Cross-int. 4. After you left school, did you learn the art of weaving by practical operation?

Ans. I never was apprenticed, but learned that business.

Cross-int. 5. Was it before you went to Europe or after you came back that you visited Solomon Doebley's weaving factory?

Ans. After I came back.

Cross-int. 6. At the first time you visited his factory, what kind of looms did you see, and how many?

Ans. The first time he had but three or four looms, what are called swivel looms, with from ten to fifteen strips of fabric.

Cross-int. 7. Can you fix the date when you went the second time to his factory?

Ans. No, sir; I cannot fix the date.

Cross-int. 8. Between what periods did you make these half dozen visits to M'r Doebley's factory?

1274 Ans. It was between 1841 and 1850. It might have been between 1840 and 1846. It was about the time we built our factory at Kensington, which was about 1846.

Cross-int. 9. Was that about the period when Doebley had those looms running, described in your former answer?

Ans. Yes, sir.

Cross-int. 10. Did you see any looms at Doebley's factory with double rows of shuttles at that time?

Ans. I think he had one loom running with silk face—what we call in our business broche silk face and cotton back. What we understand by broche, is made with an extra shuttle.

Cross-int. 11. Were these goods made with a Jacquard machine?

Ans. I don't think they had a Jacquard machine.

Cross-int. 12. What kind of warps had they for making these goods?

Ans. Cotton and elastic, or rubber.

Cross-int. 13. Was there no silk warp in them?

Ans. I think not.

Cross-int. 14. Were these goods made with a standing warp?

Ans. That I can't answer.

Cross-int. 15. Did the shuttles pass through the shed simultaneously or separately?

Ans. I am not able to answer that; but I don't think they did go over simultaneously.

Cross-int. 16. Had they a rising and falling shuttle-board to the lathe just described?

Ans. I think they did.

Cross-int. 17. Do you recollect me calling upon you a few years ago, and you saying if I let you alone you would let me alone?

(Objected to as new matter and incompetent.)

Ans. I do not remember that.

Cross-int. 18. Do you recollect saying to me, that in the early years of suspender making that the India-rubber cord was covered with cotton, and woven in the fabric in the manner we call a tube or sheath for it to lay in?

Ans. I remember saying that the rubber thread was wrapped
1275 with cotton before being woven, but I don't remember telling you the other. I don't remember describing the mode of weaving.

(Objected to.)

Cross-int. 19. Did not Solomen Doebley, more or less, cover all his

India-rubber threads with fibrous substances before weaving, and didn't he invent a machine for covering the India-rubber cord with a fibrous substance?

Ans. What I saw was wrapped with thread; covered would mean that you hid the elastic, which I don't mean. He had a machine which I understood he had invented. This machine would either wrap or cover.

Direct examination resumed:

Int. 20. What was the difference between wrapping and covering?

Ans. By covering, I mean that the gum was completely hidden by the cotton; and by wrapping, it was run round spirally, showing more or less of the gum. The wrapping was to prevent the gum stretching when being woven in the loom.

Int. 21. Did you ever call on M'r Smith, the complainant?

Ans. Not that I remember.

Int. 22. Have you any record of any sales of material to M'r Solomon Doebley?

(Objected to as new matter not brought out by the cross-examination.)

Ans. Only of the amount of the last bill sold.

Int. 23. What is the amount and date?

(Objected to as incompetent and in contempt of the court in putting in any further evidence on part of the defendants.)

Ans. July 8th, 1850, amount five dollars and thirty-one cents. It was never paid, and carried to profit and loss.

W'M J. HORSTMANN.

Subscribed and sworn to before me this 19th day of January, 1871.

W. GRIER HIBLER,
Examiner, &c.

Adjourned till to-morrow at 10 a. m.

1276 FRIDAY *January 20th*, 1871.

Present, M'r Dean, of counsel for respondents; M'r Smith, complainant, in person.

Deposition of John N. Wilkins, recalled.

Cross-examination by M'r Smith:

Cross-int. 1. Have you any documentary evidence of books, letters, invoices, or bills of lading, of importation of elastic fabrics prior and during all the year 1852, during the time you were a clerk of Isaac Barton & Co., and afterwards?

Ans. We have no books or papers that I know of, such as bills of lading and invoices, or such books as would give information in regard to elastics. They were all destroyed after the death of Isaac Barton, or the firm went out of partnership. We kept the old journals and ledgers. I don't think they were kept. They would not show the items of importation.

Cross-int. 2. Can you say what custom-house the elastic goods were imported through, during and prior to 1862?

Ans. It was either through New York or Philadelphia custom-house. I should think New York.

Cross-int. 3. Can you state what was the rate of duties at that time, whether ad valorem or specific duty?

Ans. I believe the duties were ad valorem, but couldn't state what it was.

Cross-int. 4. Can you state through what broker the goods were shipped to you from Liverpool, England?

Ans. I am not positive who the shipper was, but should judge Brown, Shipley & Co., of Liverpool, as most of our goods came through them.

Cross-int. 5. Can you state what house purchased these goods for you in England?

Ans. A. & L. Henry & Co.

Cross-int. 6. Would not the name of the shippers in Liverpool be on the bill of lading you received?

1277 Ans. Yes.

Cross-int. 7. Is there not two bills of lading comes with every invoice from England?

Ans. I really don't know.

Cross-int. 8. Does not the custom-house keep one bill of lading and the other forward to you when you import goods from England?

Ans. I believe the custom-house always requires a bill of lading, but as I never gave that branch of the business my attention, I don't know that we always get a duplicate, but presume we do, if it is the custom.

Cross-int. 9. What knowledge have you of weaving, and manufacturing of woven goods?

Ans. None.

Cross-int. 10. Then how did you arrive at your knowledge of the imported woven goods, testified to just now—of their construction and manufacture?

Ans. The only knowledge I have on the subject was given to me by M'r Smith himself, the complainant. He at various times would explain a patent machine, and claim that we were infringing on his patent, alleging that certain goods we imported could only be made on his machine.

Cross-int. 11. I am not asking about any alleged conversation you had with me, but about your testimony in your direct examination. In question 5, in your direct examination, you were asked, "What kind of goods were they? Were those you imported the first you know to be imported in the market?" Your answer is, "They were a union gore, that is, silk face and cotton back, and were not the first foreign goods that we knew to be in the market." I now ask you, as you say you had no knowledge of weaving or manufacturing of such goods, how you arrived at a knowledge that they were made according to my patent?

Ans. I never said that the first goods we imported were an infringement on his patent. If I did I did not so intend it, as I never knew him to claim a patent for the goods until about the same time that Horace H. Day claimed to have a patent, probably earlier, which was about 1854 or 1855—somewhere about there, but certainly a consid-

1278 erable time after we imported the goods; in fact he frequently exhibited his goods for sale, claiming them to be superior to English goods, before he ever claimed to have a patent.

Cross-int. 12. In question 6 in your direct examination, you were asked, "Was there any difference in time between the importation of the union goods and the single goods?" Your answer is: "There was no difference in time between the union goods and the all-silk goods of which Complainant's Exhibit V is as ample." And in question 7 you were asked to describe said goods. Your answer is: "The union gore I think we imported first, but there was not more than a month or two difference." I now ask you, as you had no knowledge of weaving or the manufacture of such goods, how you could swear they were like Complainant's Exhibit V?

(Objected to, as the question assumes all the answers to be given, which is not the case.

Complainant replies that he has quoted all the answer to question 7 that bears upon the subject-matter asked for, and that putting in the whole of the answer would only be redundancy.)

Ans. The only knowledge I have was given me by plaintiff himself. He would, frequently, when at our place of business, select such goods as he claimed was made on his patent machinery, but which did not refer to the goods first imported.

Cross-int. 13. When was the first time I called at your place, to your own actual knowledge?

Ans. You were there so often I couldn't possibly tell. If you tell when you first manufactured the goods, I will tell you. I never gave the subject much attention. Certainly between the years 1852 and 1856. He may have been there prior to 1852; I can't tell.

Cross int. 14. Can you swear I was at your place in Second street, Philadelphia, before 1854?

Ans. No. I have no positive way of coming at it, as I have never charged my memory with it.

Cross-int. 15. Please state what connection there is between me first manufacturing the goods and of me calling upon you in Philadelphia.

Ans. Well, about the time he first manufactured the goods, he
1279 called on us to offer them for sale. That is, I presume it was among the first he manufactured; he so led us to believe.

Cross-int. 16. What knowledge have you that I called upon you when I first began to manufacture the goods? If you have any, state what it is.

Ans. He called upon us representing that he was manufacturing these goods and offered them for sale. And as we had never seen the goods of domestic manufacture before, or heard of them, our conclusion was that he had only commenced the manufacturing of them.

(Objected to by M'r Smith, as not responsive to the question.)

Cross-int. 17. Do you refuse to answer my question?

Ans. No, sir.

Cross-int. 18. (Question repeated.)

Ans. I have no knowledge further than he said that he had commenced to manufacture these goods in this country.

Cross-int. 19. I again ask you how you could swear now the goods Isaac Barton imported in the spring of 1852 were made the same as Complainant's Exhibit V, when you had never seen me or known me before I had been in the Philadelphia market with said goods which I had made; and as you have said in your cross-examination this morning that you had no knowledge of weaving or the manufacture of fabrics, and that the only knowledge you had was what you gained from me, how you came to the knowledge of the making of such goods, which you have testified to in your direct examination in interrogatory 5, 6, and 7?

(Interrogatories read to witness.)

Ans. From the time we first imported the goods there was no material change in the manufacturing of them, except the union gore which was ordered made in the same manner as the silk, to prevent its curling up. After which time we never noticed any change in the style of manufacturingthe gores, and to all appearances those we imported were uniformly like Exhibit V.

Cross-int. 20. At what time did you send this request to England to have the union gores made after the manner of the silk goods?

Ans. I couldn't tell exactly.

Cross-int. 21. State as near as you can.

1280 Ans. I should think within a year from the time we first commenced to import them.

Cross-int. 22. What year would that be?

Ans. Couldn't tell positively unless I had the books, but I believe as early as 1852; it may have been a year or two subseqnent to that. I am not positive we imported them as early as 1852.

Cross-int. 23. Will your letter-books show the time when you sent such order out to England?

Ans. It would if we had it.

Cross-int. 24. Have you got it?

Ans. No, sir.

Cross-int. 25. What became of it?

Ans. I really don't know. I suppose it went with the balance of the waste paper, and was manufactured into new paper.

Cross-int. 26. The goods you said you imported in 1851 or 1852, of what color was the back part of the goods?

Ans. I don't say we imported goods positively in 1851 or 1852, but the first goods we imported were a white back, except the all silk, and they, to all appearance, were like Exhibit Y in the back. The back and face were the same.

Cross-int. 27. Did not the white cotton on the back run lengthwise in the fabric?

Ans. I don't know.

Cross-int. 28. Did you not notice, by raising a little of the white cotton on the back, that there was silk under it, the same as upon the face of the goods?

Ans. I did not.

Cross-int. 29. Did you not notice that near the selvedge, on the back of the goods, the silk weft passing under the white cotton, or was there not in small places on the back of the goods that you could see the silk weft through the white cotton threads?

Ans. No; I paid no attention to it.

Cross-int. 30. Have you any knowledge of weaving, or making woven fabrics by the interlocking of the warp threads with the weft threads for the making of plain goods of twilled and drilled, and satin and broken satin, and of the binders connected therewith?

1281 Ans. None whatever.

Cross-int. 31. You have said, in your direct examination, that other parties imported goods as early or earlier than what you did. State who they were, and all you know respecting such said importations.

Ans. The only house that I know who got them out as early or earlier than us was Johns & Payne, which has gone out of existence.

Cross-int. 32. Is it from hearsay, or from your own actual knowledge, that they imported these goods?

Ans. I have no positive knowledge further than that they offered them for sale, and they were regular importers.

Cross-int. 33. Did not Horace Day bring a suit against your firm for selling elastic shoe goring?

Ans. He threatened a suit, but we afterwards compromised by taking out a license and paying him.

Cross-int. 34. Was it not for selling elastic woven shoe goring?

Ans. No, sir.

Cross-int. 35. What was it for?

Ans. For selling goods that contained vulcanized rubber.

Cross-int. 36. Did not that include the elastic woven shoe goring you was then dealing in?

Ans. It did.

Cross-int. 37. Had you not the agency from Horace H. Day for the selling elastic shoe goring in Philadelphia?

Ans. We had not.

Cross-int. 38. Had you not to have the Horace Day stamp on such goring as you sold in Philadelphia?

Ans. We had a stamp on the goring. I don't know whether it was his or Goodyear's. At any rate they were stamped.

Cross-int. 39. What year was it that you made this compromise with Horace H. Day?

Ans. I don't recollect.

Cross-int. 40. Was it not in 1857?

Ans. I couldn't say; it might have been.

Cross-int. 41. In March, 1857, did I not call upon you, and you gave me an order for a case of union and all silk goring to be sent to you from my factory in Paterson, New Jersey, and I sent such case of
1282 goods to you, and you returned them to me at Paterson, N. J., without any word of explanation for your reason for so doing; and when I afterwards called upon you in Philadelphia, all your webbing was stamped under the patent of Horace H. Day, and were not the invoice of said goods made out to you as under the patent of William Smith, those that I sent from Paterson?

Ans. I have no recollection of the transaction. I only know that after our settlement with M'r Day, we sold no goods except under his patent, as we had so obligated ourselves.

Complainant here states—(M'r Dean objects to complainant making any statement on the record)—that he will attach to this witness' testimony a sworn statement from the books of complainant of such goods being sent to the firm of said witness, and of their return as aforesaid. Counsel for defendant objects to the attachment of such or any statement.

JOHN N. WILKINS.

Sworn to and subscribed before me this 20th day of January, A. D. 1871.

W. GRIER HIBLER,
U. S. Com'r and Examiner.

Adjourned to meet at Newark Hotel, Newark, New Jersey, at one o'clock p. m., to-morrow, January 21, 1871.

NEWARK, NEW JERSEY, *January* 21, 1871—1 o'clock p. m.

Present: M'r Smith, complainant; M'r Dean for respondents.

Deposition of Henry G. Gurney, recalled.

Cross examination by M'r Smith:

Cross-int. 1. Have you ever read the printed expert testimony of M'r Smith, and seen the drawings attached to the same, put in as exhibits with regard to your former testimony given before G. J. Gut-
1283 man, j'r, in New York, in the case of William Smith v. J. L. Whitehouse et al.

Ans. I have not. I have seen a printed book of depositions. I did not see M'r Smith's testimony.

Cross-int. 2. Have you seen any drawings of any testimony put in evidence in these suits?

Ans. I saw a drawing of a loom at M'r Gifford's office the first time I was called on to give evidence, but did not examine it or pay any especial attention to it.

Cross-int. 3. What kind of a sample did Dodd or Wakeman, or Dodd & Wakeman, give you to make in the High Lease loom you speak of?

Ans. A sample of suspender webbing with the warp as well as the weft covering the rubber.

Cross-int. 4. Was it a plain sample or a figured sample?

Ans. Plain sample.

Cross-int. 5. On the back of the sample, in what direction did the cotton thread lay, and was it plain on the back?

Ans. He gave me a sample with the cotton thread across and plain on the back.

Cross-int. 6. Was there no cotton threads running along the same direction as the cords?

Ans. Yes; cotton warp.

Cross-int. 7. How much did you give your weavers per yard for operating on the High Lease loom with two shuttles at one and the same time?

Ans. We paid them by the week, not by the yard.

Cross-int. 8. How many yards in a day could a weaver make in a regular day's work, weaving in the manner just described?

Ans. From eight to twelve yards, to the best of my recollection.

Cross-int. 9. What wages did you give your weavers per week for working on that High Lease loom?

Ans. From 4.50 to 6 dollars.

Cross-int. 10. Did you make any goods with silk face and cotton back upon that High Lease loom?

Ans. A small quantity

1284 Cross-int. 11. How small?

Ans. It might have been one-half yard; it might have been four times that amount.

Cross-int. 12. How was the loom geared up to make the shed on that High Lease loom?

Ans. We had a regular set of High Leases which worked a small harness held in position by lead lingos.

Cross-int. 13. What position did your warp threads lay in when the loom was at rest, not in operation?

Ans. The cotton warp laid below a level of a station warp so as to form a shed.

Cross-int. 14. When that cotton warp rose how high did it rise?

Ans. It rose above the standing warp.

Cross-int. 15. What date was it when you made these goods?

Ans. About 1848, or 1849, or 1850, but I can't actually say.

Cross-int. 16. How long did you continue to make them after you began?

Ans. To the best of my recollection we were making elastic goods more or less for M. Dodd & Son and Dodd & Wakeman, in the neighborhood of three years.

Cross-int. 17. Did you ever make for any one else than those parties?

Ans. Not to my recollection.

Cross-int. 18. What became of the loom after you were done working for them?

Ans. We used the looms making ladies' silk trimmings; eventually the looms were sold at auction.

Cross-int. 19. Were the frames of these looms what you bought in Pine street, New York?

Ans. A portion of them. Some we made in our own shop.

Cross-int. 20. What do you mean in your direct examination by saying in answer to question 4th, "The other warps, except the rubber," by rising and depressing the other warps except the rubber?

Ans. The lingos depress the whole warp in the loom when the loom is not in motion; when we tread the treddle or treddles, you
1284½ rise certain portions of the warp, which again become depressed by removing the foot from the treddle to its original position.

Cross-int. 21. Did you ever see any weaver in any other place but your own throwing two shuttles across a fabric at one and the same time, and catching them in position with the other hand?

Ans. I did not. I never visited any other factory. There was always jealousy.

Cross-int. 22. Was that the last of your manufacturing with standing warps, those goods you made for Dodd & Wakeman?

Ans. We made some heavy corded belt ribbons about the same time; probably it was after.

Cross-int. 23. Did you ever see in the market at that time, or from that time to this, or at this the present time, any ladies' corded belt ribbons but what was covered top and bottom with warp threads interlocked with weft threads?

Ans. I have seen them with the cords covered with the weft only but not lately; and also covered with weft and warp, but not lately.

Cross-int. 24. When and where did you see them in the market?

Ans. I have seen them in New York about the time I speak of, and have had samples sent me with orders to make the goods to match.

Cross-int. 25. I want to know the names and where they resided.

Ans. We had them in our own store for sale at 22 Liberty street.

Cross-int. 26. Did you see them anywhere else?

Ans. To the best of my recollection I have seen them at Blake & Brown's, at the corner of Cedar and William streets, New York, and at Henry Robinson's, in William streets, New York. At that time I did not go to New York once in three months, being engaged at the factory in Newark.

Cross-int. 27. What year was that?

Ans. About 1849 to 1852; in that neighborhood.

Cross-int. 28. Was that the last time you saw them?

Ans. No, sir.

Cross-int. 29. Where did you next see them?

1285 Ans. I can't say. The last I saw I saw in our own place, in old stock.

Cross-int. 30. When did your firm at New York cease to make these belts with the cord covered by the weft threads only?

Ans. As soon as they went out of fashion.

Cross-int. 31. At what period did they go out of fashion?

Ans. I think about 1853.

Cross-int. 32. Is Robinson, or any of those parties, living now?

Ans. I do not know.

Cross-int. 33. Have you given all the information you know about the looms or subject just treated of?

Ans. As far as I was able.

H. G. GURNEY.

Subscribed and sworn to before me this 21st day of January, 1871.
W. GRIER HIBLER,
Examiner, &c.

1286 EVIDENCE FOR RESPONDENTS.

Depositions taken, subscribed, and sworn to, in the city of Washington, District of Columbia, before

PHILO B. STILSON,
U. S. Commissioner.

Present: William Smith, the complainant, personally; Benj. Dean, esq., of counsel for respondents.

Deposition of Cornelius Jacobs.

NOVEMBER 16, 1869.

Direct examination by M'r Dean, of counsel for respondents?

Int. 1. What is your name, age, residence, and occupation?

(M'r Smith, the complainant, desires the counsel for the respondents to state what he proposes to prove by this witness.)

Ans. My name is Cornelius Jacobs; age, 52; residence, Fairfax County, V'a, and I am at present engaged in the milling business.

Int. 2. Were you employed at any time by the United States in the Patent Office? If yes, during what period of time, and in what capacity?

Ans. I was; from July, 1853, to May 10th, 1869.

(The complainant objects to the witness' testimony, as his name does not appear in the answer, or the amended answer to my bill of complaint, and all official information from the Patent Office was known to the defendants before I brought my suit against the defendants. Also, never having been duly notified that the defendants were going to take testimony of any record in the Patent Office, and the counsel for the defendants having refused to state what he wanted or intended to prove by this witness.

1287 The counsel for the defendants calls complainant's attention to the fact that the complainant has already taken the testimony of Enoch Thomas, who says in his testimony that he never made but one application to the Patent Office for a patent; and other things that this testimony will explain and tend to disprove, besides being otherwise competent.

In further answer to the second question the witness says, a part of the time, from July, 1853, till about three or four years ago, he was employed as assistant machinist, and the rest of the above period as machinist.)

Int. 3. Where are you now giving your testimony, and are there present any models; and if yes, what are they?

Ans. In the library of the Patent Office. There are present two models, both trusses.

(Complainant objects to the witness' testimony, as both of these trusses purport to be filed in the Patent Office prior to the date of his connection with it.)

Int. 4. Which of said trusses do you remember to have first seen, the one with the green and pinkish elastic fabric, or the one with the white elastic fabric attached to it?

Ans. The one with the white.

Int. 5. State where it was kept and what marks it had upon it.

Ans. It was kept with the rejected models, and had the name of Enoch Thomas upon it.

Int. 6. How long have you known the other model with the green and pinkish elastic fabric, and where was that kept, and what marks or labels were attached to it when you first saw it?

Ans. Since the fall of 1855, when I first saw it; I remember it particularly because I attached the card to it which is now on it. I recollect the old models much better than the new ones, because I handled them so much oftener. The cards were changed during the year 1855, and I put cards on the various models, in the places of strips of parchment, which up to that time had been attached to them. I took from this model a piece of parchment, and the writing on the parchment was copied by a clerk on the card now on the model. I compared the writing and affixed the card.

1288 Int. 7. What was written on the parchment which you took from the model in 1855, and what is written on the card now attached to the model having the green and pinkish elastic fabric?

Ans. The name of "Enoch Thomas, New Athens, O., surgeon's trusses, Pat. Mar. 12, 1840."

(Complainant objects to the above testimony, as the clerk who wrote the label is not present to testify to his handwriting.)

Int. 8. Is there any other writing on the model? If yes, state upon what portion of the model, and what the writing is.

Ans. There is writing on one of the pads; it is "Rec'v'd without name, Dec. 20th, 1838."

Int. 9. Is that model in the same condition in which it was when you first saw it? If not, in what respect has it been changed?

Ans. It is not. The elastic belting has been cut, and a portion of it taken out. I think there was another pad, a side pad to it. In other respects it appears to be the same.

(Complainant objects, that such testimony is inadmissible, if there were no other objections already stated. As fragments of models without specification or drawings are inadmissible as evidence under any circumstances.

Counsel for the defendants says that the objection comes with ill grace from the complainant, if the fact appears, as he is instructed it will, that the webbing of which the belt is composed was cut at the complainant's request, in order to give him a sample of it.

The complainant further states in answer to the defendant's counsel that a small piece of the webbing given to the complainant by the office did not alter the appearance of the webbing to the eye, nor have anything to do with the missing pad.)

Int. 10. Could the side pad have been separated from the truss if the web had not been cut?

Ans. Only by being torn off.

Int. 11. Look at the pieces of elastic fabric attached to said truss. How many in number are they, their widths, and whether, so far as the weaving and structure of the several pieces are concerned, they are alike?

1289 Ans. There are four pieces about three-fourths of an inch wide, two pieces about an inch and seven-eight's wide. In all respects except the width they are alike. Some portions are faded more than others.

Int. 12. Is it possible that the small pieces could have been changed without taking the truss apart?

Ans. I think not.

Int. 13. Are those pieces of elastic fabric attached to the truss by being sewed through the stiff leather backs of the truss, without the stitches passing entirely through the pad; the pads being stuffed on the front, with velvet faces, and the velvet backs and leather fronts being bound together round the outside?

(The complainant objects to the question to the woven fabric being called elastic, when it is not elastic, nor never was elastic, the fabric being so constructed and so tightly compressed together that there is no more elasticity in it than if there was no India rubber wove into it.)

Ans. It appears to be sewed through the leather before the lining was put on.

Int. 14. Do you remember when the elastic belting was cut?

Ans. Within the last few years. The latter part of M'r Theaker's term.

Int. 15. Do you remember the bringing forth of the model, with the white fabric attached, from among the rejected models?

Ans. I do. It was with the rejected models until about two or three years ago.

Int. 16. How wide is the elastic fabric?

Ans. About an inch and three-quarters.

Int. 17. Is the structure of the two trusses the same or similar, with the exception that the one with the white fabric attached has thigh pieces, and wire springs upon two of the pads?

(Objected to, as the defendants' counsel is asking witness if it is not the same, only different.)

Ans. There is a similarity of construction.

Int. 18. Have you present the machinist book, and what entries do you find in it relative to said truss with the green and pink webbing attached, and what relating to Enoch Thomas?

(Objected to by the complainant, that the board of examiners, after an exhausting examination of the bogus model, overruled both the book and the model as insufficient, in opposition to the reissue of my patent, division B.)

1290

Ans. I find in the list of models, received without names, the model of a truss received December 20, 1838, which corresponds with the endorsement on the back of the model. The entry is a "Truss (put in draw next chases), Dec. 20," under the year 1838. And I find an entry of a model of a truss, "Enoch Thomas, December 5, 1839."

Int. 19. Was the list of models received without name kept in chronological order on the same page, so that each entry must necessarily have been made at the time it purports to have been made?

Ans. It was.

Cross-examination, de bene esse, by M'r Smith:

Cross-int. 1. You stated in your direct examination that you were not connected in official relations in the Patent Office until 1853?

Ans. I did.

Cross-int. 2. Did you ever see and examine those books and models which you have testified about before you were connected with the Patent Office?

Ans. I did not.

Cross-int. 3. Do you know the handwriting of those entries in the book? if yea, please state in whose handwriting it is.

Ans. I do not.

Cross-int. 4. When did you first examine the books about which you have testified to to-day in relation to the entries and the models?

Ans. To day, for the first time.

Cross int. 5. Who first drew your attention to them?

Ans. Counsel, as I was examined.

Cross-int. 6. What instructions did you receive, if any, before you came on the witness stand?

Ans. I received none, sir.

Cross-int. 7. Do you recollect M'r Serrell and myself calling in the Patent Office, in the fall of 1867, requesting you to find the model of Enoch Thomas, as we wished to examine it in regard to its drawings and specifications?

1291 Ans. I think I do.

Cross-int. 8. Did you not request us to call next day and you would give a thorough search, which we did so call the next day, and that you said you could not find it?

Ans. I don't recollect any such circumstance. I might have told you that it was in the examiner's room, which was frequently the case.

Cross-int. 9. I am speaking now of Enoch Thomas' genuine model, which was not discovered by the office until January, 1868, after I had filed the affidavit of Enoch Thomas and shown to the examiner the original drawings and specifications of Enoch Thomas' patent, which is now in evidence as an exhibit by the testimony and oath of Enoch Thomas. This was the model that M'r Serrell and myself was inquiring of you about.

Ans. I do not recollect looking at any time for that model. I think that the first time I ever saw that model in connection with this matter M'r Gregory brought it to my room.

Cross-int. 10. Please state what time it was—what day—M'r Gregory brought that model to your room with the drawing.

Ans. It was about two years ago. I do not know precisely the time.

Cross-int. 11. Was it before Christmas, about two years ago?

Ans. I can't remember whether it was near Christmas or New Year's Day. It was in office hours.

Cross-int. 12. Please look at these pads on the bogus model, and say if the binding on the pads could not be a little removed, so that the stitching on the 3-4 web could easily be stitched through the leather of the pads.

Ans. I think not, without showing that it had been done.

Cross-int. 13. As this bogus model was received without name, prior to your connection with the office, and prior to acquaintance and knowledge of the model, can you say by what means or by what authority any name was attached to it or put upon it?

Ans. It is the duty of the machinist always to put the names upon the models.

Cross-int. 14. Do you mean to say from your knowledge of the

1292 practice and usage of the Patent Office that when models are received without names it is the machinist's duty to attach some name to them?

Ans. It is the duty of the machinist to attach the name to it that he is satisfied belongs to it.

Cross-int. 15. What rule of the Patent Office is there to guide or direct a machinist to put a name upon a nameless model?

Ans. I never knew there was a rule of the Patent Office requiring him to do this, except the custom.

Cross-int. 16. In the testimony which you have given to-day of things

prior to your connection with the Patent Office, has it been on subjects of which you can speak of your own actual knowledge?

Ans. It was not.

Direct examination resumed:

Int. 20. Was it not very frequently the case that specifications would come by mail and models by express or some other means, so that there would be a difference of time in their reception?

Ans. Yes, sir; frequently the case.

Cross-examination resumed:

Cross-int. 17. How long a time have you ever known between the arrival of a specification and the model?

Ans. Sometimes weeks and sometimes months. I have known them to be two or three years. I have known models to arrive before specifications.

Cross-int. 18. Would there not be letters respecting them, either by the attorney or the patentee himself, sent to the Commissioner of Patents?

Ans. Not at all times.

Cross-int. 19. Have you seen any evidence or heard of any where the Patent Office fees were paid, which every applicant must pay before he can apply for a patent, or do you know of such evidence being on file with the record in the Patent Office in the Enoch Thomas bogus model?

Ans. I do not know anything of it, for I never looked for it.

CORNELIUS JACOBS.

1293 *Deposition of Henry C. Spencer.*

NOVEMBER 16, 1869.

Direct examination by M'r Dean, of counsel for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Name, Henry C. Spencer; age, 31; residence, Washington, D. C.; occupation, teacher of penmanship, and an expert in the comparison of handwriting, and have been engaged in that occupation for the last twelve years.

Int. 2. Have you before you the machinist's book of the Patent Office, together with the model having attached to it the green and pinkish elastic fabric, having on it, on one of the pads thereof, the words "Received without name, December 20th, 1838," testified to and about by M'r Cornelius Jacobs? If yes, compare the said handwriting with the record on the list of models received without name on said machinist's book, which reads: "Truss (put in drawer next chases), December 20," under the year 1838, also the record, "Thomas Enoch, truss, December 5, 1839," and state your opinion as to whether said several pieces of penmanship were written by the same or different persons.

(Complainant objects to the testimony of this witness on the same ground and for the same reasons that he objected to the testimony of Cornelius Jacobs.)

Ans. I have before me said book and model, and it is my opinion that they were written by the same hand.

Int. 3. Look at the papers, file 217, Enoch Thomas, town of New Athens, State of Ohio, truss, received fifth (5) December, 1838, containing a letter bearing date New Athens, November 30, A. D. 1838, signed Enoch Thomas, and also letter dated New Athens, March 26th, signed

Enoch Thomas, which has on the top of it the words, "Ans. 1, April, 1839," and also papers, file "1511. Enoch Thomas, county of Harrison, bernial and uterine supporter, received December 3, 1839," and containing a petition for a patent, bearing date New Athens, January 25, A. D.
1294 1840, and specifications; also letter bearing date New Athens, January 7, 1840; also letter bearing date New Athens, February 28th, 1840, produced as original files in the Patent Office by the officers thereof, and all signed Enoch Thomas, and state whether, in your opinion, all of said papers were signed by the same or different persons, and whether they were written by the same or different persons.

Ans. I have examined said papers, and it is my opinion that the signature, "Enoch Thomas," to each of them was written by the same hand.

Cross examination, de bene esse, by M'r Smith:

Cross-int. 1. Will you please look at the writing on this disputed model of Enoch Thomas, and say if you can recognize it as the handwriting of any one of which you have given testimony in your direct examination?

Ans. I recognize it as the same handwriting as the entry in the list of models received without name, reading, "Truss (put in drawer next chases), December 20." It is the same as another entry, which reads as follows: "Thomas Enoch, truss, December 5," under 1839, and the same as signatures "Enoch Thomas" to papers contained in file 217, also to papers in file 1511.

Cross-int. 2. When was the first time you saw these models and the papers which you have testified to?

Ans. I saw the model and papers referred to for the first time about three hours before giving my first testimony.

Cross-int. 3. Please state who first showed you the model, and where it was, when you first saw it.

Ans. M'r Dean, the counsel for the defendants, first showed me the model, and I first saw it in the Patent Office, in the library, where my testimony was taken.

Cross-int. 4. Please state who it was that first called upon you to give testimony as an expert in this matter, and state what conversation passed between you.

Ans. M'r Dean and M'r Beadle were the first and only persons who called upon me in relation to this matter. M'r Dean did the talk-
1295 ing, but I do not remember in what terms he expressed himself. I only remember the substance of what he said, which was as follows: That a case was pending at the Patent Office, involving the question as to whether several signatures were written by the same man.

Cross-int. 5. How many years have you been an expert in handwriting?

Ans. About twelve years.

Direct examination resumed:

Int. 4. You have testified that all the letters to which your attention has been called, purporting to have been signed by Enoch Thomas, and bearing date New Athens, Ohio, were in your opinion signed by the same hand. You have also said in your direct examination that one hand, in your opinion, wrote the several entries in the Patent Office. Is it your opinion that the letters bearing date New Athens, Ohio, were written by the same hand who made the entries in the Patent Office?

(Complainant objects to the question as outrageously leading.)

Ans. The opinion I had formed, based upon a comparison of the writings and which I intended to express, was that the entry on model referred to, and the entries referred to in model book, were by one hand, and that the papers contained in file 217 and in file 1511 were also signed by one hand, though not the same hand that made the entries referred to in model book and on model.

(The complainant objects to the counsel for defendants making arguments what the answer of the witness shall be.)

Cross-examination resumed:

Cross-int. 6. During the time of your cross-examination in every answer which you have made thereto, have you not prepared your answer by first writing it down in pencil on a piece of paper, and read your answer from said paper unto the examiner?

Ans. My answers were written out only in part.

Cross-int. 7. Was it not the principal and leading part of your answers which you wrote down?

Ans. It was, yes.

1296 Direct examination resumed:

Int. 5. During the taking of your testimony have you heard any argument from any one as to what your answer should be?

Ans. I have not.

Cross-examination resumed:

Cross-int. 8. Has not the counsel for the defendant during the time that you have been giving some of your answers in the cross-examination, you have stopped to listen to the conversation of counsel when giving your answer, and resumed it again after counsel had finished speaking?

Ans. No.

Cross-int. 9. Did you not, during the time you was giving some of your answers in your redirect examination, stop to listen to the conversation of counsel, resume and finish your answer after the counsel had done speaking?

Ans. Conversation occurred between counsel and others, but I did not stop the preparation of my answer until completed.

Cross-int. 10. In all your answers given in your direct and cross-examination, has it been the truth and the whole truth?

Ans. My testimony gives the truth and the whole truth.

H. C. SPENCER.

Deposition of George W. Gregory.

NOVEMBER 16, 1870.

Direct examination by M'r Dean, of counsel for respondents.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is George W. Gregory; age, about 26; residence, Washington; occupation, examiner in the Patent Office.

Int. 2. Was the application for the reissue of William Smith's patent, division B, for improvement in corded elastic fabric, submitted to you for examination? If yes, state what you did in the discharge of that duty.

1297 Ans. I proceeded to and examined it in the usual way; found references that in my judgment answered the claim; refused it, and gave my reasons for so doing in official letters, which are to be found in the reissue files.

Int. 3. In your examination did you find any fabric which answered the claim of division B?

Ans. I did find such a fabric attached to a truss, having a card tied to it, bearing or having the following inscription: "Enoch Thomas, New Athens, O. In surgeons' trusses, Pat. Mar. 12, 1840." I gave, consequently, the patent of Enoch Thomas, and the fabric thereon as an anticipation of M'r Smith's claim. One of the pads of that truss is marked in ink, "Rec'd without name, Dec. 20, 1838." I found this truss in the case containing the patented trusses, and my attention was called to them when passing by seeing different varieties of webbing attached. The fabric attached to this truss is like that claimed and patented in division B, and the India rubber warp is covered at the bottom and top by the weft only, and the rubber warps are separated from each other by a fabric formed by interweaving of the textile warp and weft, and the crossing weft lies entirely above or below the rubber warp, and in no case does the weft in crossing pass alternately above and below the rubber warp.

(Objection by complainant to all matter related to the model of Enoch Thomas, of 1838. The petition, the affidavit, and two drawings being absent, and a disputed fragment of a model only remaining. The patent never being issued is not a publication and use contemplated or intended by the revised acts of the statutes of the patent laws, made and provided.)

Int. 4. Will you please annex to this deposition a piece of the elastic fabric attached to said truss?

Ans. I will.

Int. 5. After the reception in the office of the affidavit of Enoch Thomas, did you find any other truss with his name upon it? If yes, when, where, and how do said trusses compare?

Ans. I think Mess'rs Smith and Serrell came together and handed to me the affidavit of Enoch Thomas. I was so much surprised at the minute description of the colors of binding, &c., that I immediately
1298 instituted a search to find a truss that should prove, if possible, the assertion in the affidavit, and I found such a truss among the rejected models of that class, and there was written on the back, or rather on one of the pads, the name "Enoch Thomas." The parts shown in the model of 1838 are found substantially in the model of 1839, the shape of the pads varying but slightly, but in the model of 1839 there are additional straps, pads, and springs, not shown in the model of 1838.

Int. 6. Did you find on the machinist book any entry corresponding with the writing on the back of the truss?

Ans. In book backed "Models No. 1, Patent Office," on second fly leaf, headed list of models received without name, nineteenth line from top appears the entry: "Truss (put in drawer next chases) Dec. 20." The entries above are in the year 1838, and below in 1839.

Int. 7. Is there in said book any entry regarding the model of 1839?

Ans. On fourth page of entries of names commencing with T, first line, I find "Thomas, Enoch, truss, Dec. 5." These entries occur under the following heads: "Names of Patentee," "Title of Model," "When received."

Int. 8. Are there small pieces of elastic fabric on the truss of 1838 narrower than the large piece attached thereto, of which a sample is annexed to this deposition and marked "Defendants' Exhibit No. 30, P. B. S."? If yes, how do said small pieces of narrow fabric compare in said structure with said exhibit, how are they attached to the pads, and could

they have been attached as they now are, after said pads were completed?

Ans. They are the same as the exhibits except as to width, are sewed to the pad through the leather thereof by white silk, and after the narrow web was sewed to the pad the velvet back was put on and the pad bound with a binding. The narrow web could not have been put on as I now find it, after the velvet and binding was applied and the pad finished. For if so sewed, the stitch would appear through the velvet.

Int. 9. Did you show said truss to Mr Smith? If yes, what was said about the fabric and did you give him a portion of said fabric cut from the belt?

1299 Ans. I showed it to him, and he, I think, considered it like his fabric, but said it was not made in this country. I gave him a piece at his request.

Int. 10. You say you think he considered it like his fabric; what did he say in substance regarding it?

(Objected to, as the witness has already answered the question.)

Ans. I can't state conversation, but think at the time that he acknowledged it was like his fabric, but considered that because it was made, as he thought, in some other country, it would not answer his claim to it as an original inventor here.

Int. 11. Is there anything whatever, within your knowledge, that would lead you to suppose it probable or possible that said model came to the Patent Office, except at the time when the record upon it and in the model book indicate?

Ans. There is not, and I believe that it was filed agreeably to the office records.

Int. 12. Are the models in the Patent Office kept under lock and key, and can they be got at except with the attendance of some officer or employee of the department?

Ans. The models are kept in locked cases; the keys are kept by the machinist and his assistants, and they open the cases, and as far as I am aware, always remain with strangers examining the models, and nearly always with the examiners themselves.

Cross-examination by Mr Smith:

Cross-int. 1. In your direct examination, No. 10, will you swear that that conversation was had with me, as stated therein?

Ans. To the best of my knowledge and belief the conversation was as stated.

Cross-int. 2. In your direct testimony about the writing on the models and the entries in the book, as therein stated, do you speak from what you suppose to be the facts, or do you speak of them from your own knowledge, as actual facts?

Ans. I have testified as to the entries on book and indorsement on model from what I have seen, and I believe that the books of the office are correct. I have no reason to think otherwise.

1300 Cross-int. 3. Did you give your testimony from actual knowledge in the matter?

Ans. I did not see the entries made, and my testimony is given to the best of my knowledge, belief and judgment, after consulting the office records.

Cross-int. 4. Is it known, or have you ever heard the name of the person which made them entries in the book, in 1838 or 1839, regarding the models?

Ans. The entries referred to in the book were made by the proper of-

ficer who then received models, and the entries were, in my judgment, made by the same party. I have not tried to ascertain his name, as the office record was sufficient. I have not heard his name and do not know who the officer was.

Cross-int. 5. Are you not aware, and has it not come under your own observation, of models and other things being stolen out of the cases in the Patent Office?

Ans. I do not know that any models have ever been stolen, but do remember that a sword was stolen from one of the cases as the handle was set with diamonds.

Cross-int. 6. Has not the record of the Patent Office often been complained of by solicitors of patents, sometimes contested and sometimes adjusted?

Ans. I know of no complaints as to the validity of records of Patent Office.

Cross-int. 7. Have not there been hearings before parties in the Patent Office as to the validity of records?

Ans. Not to my knowledge, and I never heard of such a case.

Cross-int. 8. Please look at the bogus model again, and where the narrow straps are sewed on, and see if the silk that is used in sewing them on is not, does it not look brighter and cleaner, and is it not of a finer quality than that used to sew on the leather straps on the pad?

Ans. In my opinion the silk is the same, for both.

Cross-int. 9. In your opinion would an expert that had been used to getting up bogus models find much difficulty in loosening a little of the velvet padding to make room to stitch the narrow elastic web on the leather of the pad?

1301 Ans. I think that such an expert would find it quite a job to remove the binding and velvet sufficiently to sew on the narrow straps for the reason that he would be unable to do so in the presence of the officers in charge, and could not do so, without the truss would readily show the change, for the binding could not be replaced exactly as before.

Cross int. 10. Will you please state the reason why the silk which stitches on the binding, which in all parts of it, both inside and out, looks so old and dirty, and where least exposed is so much dirtier and older in appearance than the silk which stitches on the narrow elastic webbing, where it is the most exposed?

Ans. I do not consider that there is any material or great difference as to the shade or color of the silk used for stitching the binding and the straps, and I cannot account for any such difference.

Cross-int. 11. Please take up and look at the two models of 1838 and 1839, and give your opinion as far as you can, why that of 1839 should have such an old and decayed appearance, while that of 1838 should appear as only constructed and made a few years ago.

Ans. I can only answer that the patented models are often dusted and the cases kept clean, whereas rejected models receive but little attention.

Direct examination resumed:

Int. 13. State whether you have not heard of more complaints regarding the Patent Office, as coming from M'r Smith, the complainant, than from all other sources combined.

Ans. I must say that I have heard more complaints arising from this patent of M'r Smith's, than from all others.

Cross-examination resumed:

Cross-int. 12. Can you explain that when I or my friends applied to the records of the Patent Office for certain affidavits and exhibits, which cannot be found, and looking for models in their proper places where they ought to be kept, and cannot be found; and no information can be arrived at than the keepers of the cases or the records where-
by they can be found, that they can be produced here, except-
1302 ing one affidavit which is still held back, of E. T. Sawyer, can be produced and put in evidence here at the taking of the testimony?

Ans. I do not know as to the facts presented in your question, and I cannot answer why you could not get and see what you wished, as I have nothing to do with such matters. I did not retain in my room any of the matter used in your case. Affidavits and exhibits are not always preserved, and I think any of them could have been produced had the proper officers been consulted, and would have been produced to one party as readily as another.

Cross-int. 13. Who do you consider the proper officers?

Ans. Captain Castle, and the head machinist, and M'r Emory.

G. W. GREGORY.

1303 EVIDENCE FOR RESPONDENTS.

Taken pursuant to the 67th rule of the Supreme Court of the United States in equity, as amended, before

N. AUSTIN PARKS,
Special Examiner.

Deposition of James Knott.

BOSTON, MASS., *October* 1, 1869.

Present, William Smith, the complainant, personally, Benjamin Dean, esq., of counsel for respondents.

Direct examination by Benj. Dean, esq., of counsel for respond-ents:

Int. 1. State your name, age, residence, and occupation.

Ans. James Knott; age, 60 years; residence, Melrose, Mass.; occupation, ladies' boot and shoe maker.

Int. 2. How long have you been engaged in this business?

Ans. Ever since I knew what business was. I was with my father till 1850, and afterwards for myself.

Int. 3. Where were you engaged in such business?

Ans. Always in Boston.

Int. 4. State the character of said business as conducted by you.

Ans. It was custom ladies' boot and shoe business entirely. Almost entirely made to order and of the best qualities.

Int. 5. Did you ever make shoes with elastic gores in them? and if yea, state what kinds of gores; when, as near as you can, you first used the different kinds, and to what extent.

Ans. I have used the wire gores first, as I recollect, for certain customers who brought them; and afterwards they brought rubber gores already cut for use, the edges being sewed ready for insertion in the boots. After that we bought the webbing by the yard, till M'r Winslow brought his license, and then we had to buy it of him.

1304 Int. 6. When did M'r Winslow bring his license?

Ans. About '46 or '47. The same time my uncle Robert Knott received his from Winslow.

Int. 7. Where did your customers, who brought you the gores to be inserted in boots or shoes, obtain them?

Ans. They told me they got them from London.

Int. 8. Look at Exhibit A A, N. A. P., Examiner, and state how that compares with the rubber gores brought you by your customers, before you obtained the license from Winslow.

Ans. According to my recollection, that that the ladies brought was a little coarser; the rubber was coarser. It looked the same as that. It was woven goods, and as elastic, or about as elastic as this exhibit; about as elastic as the goods now used, but not so fine as that.

Int. 9. Is there any other circumstance, except the obtaining the license from Winslow, by which you can fix the time when you first used the different kinds of elastic gores you have testified about?

Ans. No, I can't bring to mind anything as to when I first used them. I know it was when we were in Summer street.

Int. 10. Between what dates was your place of business in Summer street?

Ans. From March, '25, to February, '48.

Int. 11. Did you use all the kinds of elastic gores you have testified about while you were in Summer street?

Ans. Yes.

Adjourned to 2d October, at 9 o'clock; thence from week to week to 1st November, at 11 o'clock.

NOVEMBER 1ST, 1869.

Int. 12. What became of your license from Winslow?

Ans. A year or two ago I was looking over my papers and destroying such as I did not want, and his license was among the papers I destroyed, I know. It was given at the same time and is to the same effect as the one given to my uncle, which is here produced, marked Exhibit B B, N. A. P., Examiner.

1305 Cross-examination by M'r Smith:

(Complainant objects to the foregoing testimony as incompetent and irregular, as the use of foreign goods in this market must be proved through the custom house, and isolated gores coming into this country from abroad is no proof of use in this country, as provided by acts of Congress, and puts the following cross interrogatories, de bene esse:)

Cross int. 1. Please state where you were born.

Ans. In London, England.

Cross-int. 2. In what year?

Ans. In 1809.

Cross-int. 3. When did you emigrate to this country?

Ans. In 1818.

Cross-int. 4. State how you were employed from the time of your arrival in this country to the time you commenced making boots and shoes.

Ans. At first I went to school. After I left school I went to my father to learn my trade.

Cross-int. 5. How long did you continue with your father learning the business?

Ans. I was with him learning the trade till I was fifteen years old. Then he gave me my time, and I was with him until he died.

Cross-int. 6. When did your father die?

Ans. In 1831. When I was twenty-one he took me into partnership, and I continued with him until his death.

Cross-int. 7. Where did your father reside at the time of his death; in what street, and at what number?

Ans. In Province street, Boston. I don't recollect the number.

Cross-int. 8. When did your father reside in Washington street, Boston?

Ans. He moved from there the 17th March, 1825, to Summer street.

Cross-int. 9. Did he not remove to Washington street again after that date?

Ans. No.

1306 Cross-int. 10. Did not you yourself remove into Washington street after that date?

Ans. Yes, I did.

Cross-int. 11. State to what number in Washington street you removed, and where and when you removed thence.

Ans. I moved to 218 Washington street in 1857, and left there in 1860.

Cross-int. 12. Who was your landlord of the store in Washington street?

Ans. M'r S. H. Gibbens.

Cross-int. 13. Have you got the receipt for rent paid M'r Gibbens for rent of that store?

Ans. No.

Cross-int. 14. Where is M'r Gibbens to be found?

Ans. I can't tell you.

Cross-int. 15. What is his first name?

Ans. Samuel.

Cross-int. 16. Please state his business and occupation while in Boston.

Ans. Grocer.

Cross-int. 17. What did you do after your father's death? Did you continue manufacturing boots and shoes on your own account?

Ans. I did.

Cross-int. 18. Did you ever go into any kind of manufacturing other than boots and shoes; if yea, what?

Ans. I did not.

Cross-int. 19. Are you acquainted with any other kind of manufacturing? If so, what?

Ans. No.

Cross-int. 20. Have you seen any other kind of manufacturing; if yea, what?

Ans. I have not.

Cross-int. 21. Do you know anything about the art of weaving? If yea, state what.

Ans. I do not.

Cross-int. 22. What was the names of those parties who brought you, as you say, elastic wire gores to put into Congress boots?

1307 Ans. As far as I recollect, M'r's W'm H. Gardiner and her sister, Miss Sally Perkins, and a daughter of M'r's Gardiner, Miss Mary Gardiner.

Cross-int. 23. State where they resided at that time, the street and number.

Ans. I can't recollect. It was thirty years or more ago.

Cross-int. 24. Did you keep books of account at the time you manufactured, thirty years ago?

Ans. I did.
Cross-int. 25. Will you produce those books for examination?
Ans. No.
Cross-int. 26. I demand those books to be put in evidence. Will you produce them?
Ans. No.
Cross-int. 27. Who has called on you respecting giving this testimony here?
Ans. M'r Dean.
Cross-int. 28. Any one else? Did M'r Henry L. Daggett call on you?
Ans. Yes; and the complainant called.
Cross-int. 29. State what Henry L. Daggett said to you.
(Objected to.)
Ans. I can't tell what he said.
Cross-int. 30. Try to do so.
(Objected to.)
Ans. I can't tell, sir.
Cross-int. 31. Didn't he explain to you the relation of the warp and weft thread in that sample?
Ans. He had no sample when he was there.
Cross-int. 32. What did he come there for?
Ans. To ask me if I ever made any of them gored boots.
Cross-int. 33. What answer did you give him?
Ans. Yes.
Cross-int. 34. What reply did he make to you?
Ans. That he thought so.
Cross-int. 35. Did he give any reason for thinking so?
1308 Ans. No.
Cross-int. 36. What else did he say?
Ans. I can't tell you what he did say.
Cross-int. 37. What else did you say to him?
Ans. That I can't say.
Cross-int. 38. Was there not more conversation between you and M'r Daggett than you have stated?
Ans. No.
Cross-int. 39. Was there no conversation between you about cemented goring, Dupont's stitched goring, and woven goring?
Ans. No.
Cross-int. 40. How often did M'r Daggett call upon you in reference to this matter?
Ans. Only once.
Cross-int. 41. Who brought that sample "A A" first to you?
Ans. It was never brought to me. It was shown me here when I was first examined.
Cross-int. 42. How often has M'r Dean called upon you in reference to this matter?
Ans. Two or three times.
Cross-int. 43. State the conversation you had together the first time.
Ans. I can't tell now.
Cross-int. 44. What did you talk about?
Ans. He asked me if I ever made any gored boots of the wires and rubber, and I told him I did.
Cross-int. 45. Any more conversation at that interview?
Ans. He said he would probably want me.
Cross-int. 46. Anything more? State all that was said.
Ans. I don't recollect anything more.

Cross-int. 47. What transpired at your second interview with M'r Dean?

Ans. It was on the same subject—goring.

Cross-int. 48. Didn't M'r Dean explain the difference between various goring?

Ans. No.

1309 Cross-int. 49. What was the reason of his second call on you?

Ans. To learn if I was ready to be called upon at any time.

Cross-int. 50. What transpired the third time he called on you?

Ans. I don't know of anything.

Cross-int. 51. What did he say to you?

Ans. I can't tell you; I don't keep such things in my mind.

Cross-int. 52. Did he come to buy a pair of boots of you?

Ans. No.

Cross-int. 53. Is M'r Daggett a customer of yours in your trade?

Ans. I have made some boots for his wife.

Cross-int. 54. How long ago?

Ans. It was when we were in Summer street.

Cross-int. 55. In what year did you first see a woven elastic gore for Congress boots?

Ans. I can't state in what year it was.

Cross-int. 56. Do you recollect buying woven elastic goring of the complainant?

Ans. I do not, now.

Cross-int. 57. Can you swear that you did not buy any of him?

Ans. No.

Cross-int. 58. That woven elastic goring you speak of in your direct examination was of what color on the face and what on the back?

Ans. I don't recollect, it was so long ago.

Cross-int. 59. Can you state of what materials it was made?

Ans. One was of wire, and the other was of rubber.

Cross-int. 60. Was the back of that woven elastic gore you speak of white or black?

Ans. I can't tell you now.

Cross-int. 61. Can you state how it was constructed and woven in relation to the warp and weft threads and rubber threads?

Ans. No.

JAMES KNOTT.

1310 *Deposition of Henry M. Snell.*

NOVEMBER 1, 1869.

Direct examination by M'r Dean, of counsel for respondents:

(The production of this witness objected to as incompetent.)

Int. 1. Have you been previously examined on behalf of complainant in these causes?

Ans. I have.

Int. 2. What is the name of your present firm?

Ans. The present name of the firm is Pelton, Snell & Co. We are successors to Joseph Dix & Co., whose bookkeeper I was. The present firm commenced January 1st, 1868.

Int. 3. While bookkeeper of Joseph Dix & Co., did you receive any communication from complainant? If yea, produce it, to be annexed to your deposition.

(Complainant objects to any isolated letter being put in evidence, unless the whole correspondence on the same subject be also put in.)

Ans. I did. I produce it, marked Respondents' Exhibit C C, N. A. P., Examiner.

Int. 4. Did you at any time after receiving this letter have any conversation with M'r Smith regarding the grounds of his claim? If yea, give the conversation as fully as you can.

Ans. I did. M'r Smith's claim, as I understood it at that time, was covered by a patent on the process of manufacturing. M'r Smith so stated it at the time. M'r Smith said that the goring could not be manufactured out of the country on his looms and sold in this country, although he had no patent in England, or providing he had no patent in England, because what protection would he have in his process of manufacture if the goods could be sold in this country? This was in reply to a statement made to him that his claim, only covering a process of manufacture, would not prevent the sale of the goods by dealers in this country. His claim was on the process of manufacturing union
1311 gores. He stated that union gores could not be made by any other process than under his patent, except at so high additional cost that they could not compete with his goods. He made at this time no other claim except the process of manufacturing union gores. I might state how I came to recollect this conversation. His claim being only on union gores, on the manufacture of union gores, if he established his right to a royalty from the manufacturers, it would raise the price of union gores to so near the price of all-silk gores that all-silk gores would take the place of union, as being more desirable at the same price, or about the same price. By all-silk gores I mean those having front and back composed of silk.

Int. 5. Did M'r Smith, at that time, say anything about his knowledge that the union web was made on his machine, or by his process?

Ans. He said that it could not be made excepting by his process, unless at a great advance on the cost—perhaps double what it could be manufactured for in his loom; at so much advance that it couldn't compete at all.

Int. 6. Did he claim that the union web, then held for sale by Dix & Co., had been woven by his loom or process?

Ans. I can't say that he did. I think that the goods we had on hand at that moment were not alluded to in the conversation.

Int. 7. Did he claim that goods then in the market, and known as union goods, must have been woven by his loom or process?

Ans. He did, for the reason that they couldn't be manufactured by any other process at anything like the price at which they were selling.

Cross-examination de bene esse, by M'r Smith, complainant:

Cross-int. 1. Look at respondent's Exhibit C C, and say if the word "To," preceding the address, is in your handwriting.

Ans. It is not.

Cross-int. 2. Do you know whose handwriting "New York, October 3d, 1861," is?

Ans. I should say it was written by William Smith; but as I didn't see him write it, I can't state positively that it is.

Cross-int. 3. Do you know whose handwriting the words in the latter part of the notice, "and known in the trade as union goods," is?

1312 Ans. I believe it to be written by William Smith. The paper is in just the same condition as when it came into my hands, with no additions or alterations, excepting the marks put in by the examiner.

Cross-int. 4. Have you got the envelope that contained that notice?

Ans. I have not.

Cross int. 5. At the date of that notice, were not all my letters directed to Joseph Dix & Co. marked "private"?

Ans. I don't remember.

Cross-int. 6. Don't you remember that at that time, or about that time, Nathan Nichols, Joseph Dix, James C. Elms, and William Faxon began negotiating with complainant for the purchase of my patent?

Ans. I believe there was something of that sort going on, but whether at that time or some other I cannot state. Further, I do not know that the persons named in the question were the parties or not. They may have been the ones or may not. The meetings were not held in my presence.

Cross-int. 7. Do you not know that Joseph Dix was one of the parties?

Ans. I think he attended the meetings, but whether with the intention of buying any right in the patent, I don't know.

Cross int. 8. Did M'r Dix make you a confidant of what was transpiring at that time?

Ans. I think not fully.

Cross int. 9. When was the first time you saw defendants' Exhibit C C?

Ans. I suppose by its date that I first saw it on or about that time.

Cross-int. 10. In whose possession has it been since that time?

Ans. With Joseph Dix & Co.'s papers, to which I have had access in times past.

Cross int. 11. In whose possession are those papers now?

Ans. In M'r Dix's.

Cross-int. 12. Have they not always been in his possession?

Ans. They have. I've had custody of them as clerk for him till January 1, 1868. They were always accessible to him.

Cross-int 13. Has not M'r Dix always had private correspondence and papers which were not accessible to you?

1313 Ans. I think he has.

Cross-int. 14. Who gave you Exhibit C C to bring here and offer as evidence?

Ans. No one gave it to me to bring here for that purpose.

Cross-int. 15. For what purpose was it given to you?

Ans. For any purpose I might desire to use it for.

Cross-int. 16. Who gave it to you?

Ans. I can't say whether M'r Dix gave it to me, or whether I took it from a file of papers belonging to Joseph Dix & Co., or whether it was handed to me by some one else.

Cross-int. 17. Will you swear that you did not steal it from among Joseph Dix & Co.'s papers?

Ans. I did not steal it.

Cross-int. 18. How did you come by it?

Ans. I think it must have come into my hands in one of the three ways I mentioned in my 16th answer to cross-interrogatory.

Cross-int. 19. (18th cross interrogatory repeated and answer demanded.)

Ans. I took it from our pocket-book, Pelton, Snell & Co.'s, this morning. I have had it there for some time, and took it out, as I say, this morning. I cannot say any more definitely how it came to me, but it came undoubtedly from Dix & Co.'s papers.

Cross-int. 20. Are you affected with a bad memory, that things pass from your mind so quickly?

Ans. Some things I retain, particularly where there are circumstances which impress it on my memory.

Cross-int. 21. That is, I suppose, the great difference—whether you were a witness for complainant or for defendants.

(Objected to as improper and insulting to witness.)

Ans. I am not responsible for your suppositions.

Cross-int. 22. Isn't your firm one of the parties to pay part of the expense of this ring to oppose all suits that complainant brings?

Ans. I don't know as there is any ring formed to oppose his suits. If there is anything of that nature, it is simply to test our rights.

Cross-int. 23. Isn't your firm one of an association for that purpose, and have you not paid out money for that purpose?

1314 Ans. We have not paid any money. We are connected with an association for testing our rights.

Cross-int. 24. Isn't your firm under liabilities to pay your portion of expense for defending any suits already brought by complainant on his patent?

Ans. We may be liable to contribute some money for some such purpose. I don't understand what use is to be made of the money, but suppose it is to ascertain our rights in any case where we are interested.

Cross-int. 25. Didn't you know the contents of the articles of agreement of this association at the time you signed them?

Ans. I did.

Cross-int. 26. How can you say then, now, that you can't answer my question, when I ask you what liability you are under?

Ans. I don't understand that I have said so. I think my 24th cross-answer covers the question.

Cross-int. 27. How many thousand dollars difference do you think it would make to you if you succeed in breaking complainant's patent, or if he succeeds in maintaining it?

Ans. I am not attempting to break his patent.

Cross-int. 28. Are you not aware that if the association succeeds in defending the suits it would break complainant's patent?

Ans. I do not know the nature of these suits, whether it would break his patent or not.

Cross-int. 29. Are you not aware that if complainant succeeds in his suits against the defendants you will have to pay your share of the expenses of the suits?

Ans. I suppose we should pay a proportion of the expenses.

Cross-int. 30. You have alluded in your direct examination to certain conversations had with complainant; when and where and with whom were those conversations held?

Ans. I cannot give the exact dates. It was in M'r Dix's store, corner of Milk and Pearl streets. M'r Smith and myself had one conversation, that of which I testified. My impression is that M'r Dix was present, but I am not certain.

Cross-int. 31. Can you state whether this conversation was held one, two, or three years after the date of respondent's Exhibit C C?

1315 Ans. I cannot, but I should say it was at one of the times that M'r Smith was in Boston holding consultations with dealers in shoe-finding goods.

Cross-int. 32. Wasn't this conversation you allude to had between the complainant and M'r Dix?

Ans. M'r Dix might have been present. I had the conversation that I have stated personally with M'r Smith.

Cross-int. 33. Who asked you to bring Exhibit C C here and put it in evidence?

Ans. I showed a copy of it to M'r Dean, of my own accord, and told

him I could produce the original if it was desired. M'r Dean requested me by note to bring it up.

Cross-int. 34. Will you produce the copy of the exhibit you refer to, and the note which M'r Dean wrote you?

Ans. I will, if I can find it, produce the letter. It was left in my desk at the store. The copy I left with M'r Dean.

Cross-int. 35. Why didn't M'r Dix come and produce that exhibit and give his evidence here, and not come by proxy?

Ans. M'r Dix had nothing directly or indirectly to do with my coming here. I don't know how I can be called his proxy.

Cross-int. 36. Then are you to be understood that you appropriated a paper that didn't belong to you and volunteered to M'r Dean to give evidence upon it?

Ans. The paper has been in our pocket-book for a long time, and I had got to consider it as our property without going into the question whether it was or not.

Cross-int. 37. You have already stated that the paper belonged to Joseph Dix and was in his possession since January, 1868. By what process of reasoning do you now make it your property?

Ans. I have not stated that that paper was in his possession since January, 1868. Just at what time it came into the possession of Pelton, Snell & Co. I cannot state.

Direct examination resumed by M'r Dean:

Int. 8. When, in giving your answer to the 19th cross-interrogatory, you said "It come undoubtedly from Dix & Co.'s papers," did M'r Smith, the complainant, say anything; and, if yea, what?

1316 Ans. He did. He said that it undoubtedly did.

Int. 9. During the taking of this deposition, has M'r Smith said anything about the signature to Exhibit C C; and, if so, what?

Ans. I understood him to admit the signature to be his.

Cross-examination resumed:

Cross int. 38. Please state the exact words complainant said when he admitted the signature to Exhibit C C.

Ans. I don't remember. The remark conveyed to me the idea that he admitted the signature.

Cross-int. 39. Have you heard M'r Smith say anything else about that paper?

Ans. He has just said, "I think it is a paper I sent to M'r Dix to deliver to some one else, and which he did not deliver."

(Complainant says that Exhibit C C is not in the same state as when it came out of his hand.)

HENRY M. SNELL.

Adjourned to November 2, at 10 a. m., with the understanding that complainant might note his objections hereafter to the competency of any evidence to be taken in pursuance of said adjournment.

Respondents' Exhibit C C.—N. A. P., Examiner.

NEW YORK, *October 3d*, 1861.

To Mess'rs DIX & Co.:

Please take notice that you, and all persons acting under you, are hereby forbidden from manufacturing, selling, or importing for use or sale, or causing the same to be done, any goods or fabrics, the manu

facture, importation, use or sale of which would infringe upon the letters patent granted to me by the Government of the United States, bearing the date of the 5th of April, 1853, for an improvement in weaving corded and elastic fabrics, chiefly designed for elastic gores for boots and shoes, and known in the trade as union goods.

WILLIAM SMITH,
69 Gold Street, New York City.

1317 *Deposition of Edward M. Farnsworth.*

NOVEMBER 2, 1869.

Direct examination by Benjamin Dean, esq., of counsel for respondents:

Int. 1. State your name, age, residence, and occupation.

Ans. Edward M. Farnsworth; 40 years old; residence, Boston, Mass.; occupation, dealer in shoe findings.

Int. 2. Are you a partner of Nathan Nichols, defendant in the above-entitled cause of Smith v. Nichols, and how long have you been his partner in business?

Ans. I am, and have been for five years past.

Int. 3. Did you ever hear any conversation between M'r Nichols and M'r Smith concerning M'r Smith's claims under his patent? If yea, relate all you remember of it.

Ans. I heard M'r Nichols ask M'r Smith if he could tell what web was made on the machine that he claimed. M'r Smith's reply was, "I can, but you cannot." Then M'r Smith and M'r Nichols walked from the part of the store they were in to the counter where we kept our union web, and took down some web and examined it. I didn't go with them, and heard nothing further that was said.

EDWARD M. FARNSWORTH.

Adjourned to November 3, at 10 a. m.

Deposition of Robert Knott.

NOVEMBER 2, 1869.

Direct examination by Benjamin Dean, esq., of counsel for respondents:

Int. 1. State your name, age, residence, and occupation.

1318 Ans. Robert Knott; age, 76 years; residence, Charlestown, Mass.; occupation, ladies' boot and shoe maker; I have been in that business ever since I was a boy; I have kept in School street, Boston, over forty years; I learned my trade in London, England.

Int. 2. State your use of elastic materials for gores in boots and shoes.

Ans. The first that I recollect was a boot imported from London with wire gores in it; and soon afterwards, I am not prepared to say how soon, I saw a set of four, that were brought to me tacked together, to make into ladies' boots; these were silk and rubber, as I understood, similar to what we use now. As to the working of the wire ones, I remember the binders complaining of the breaking of the needles in putting them in. As to the rubber and silk gores, they were brought to me by different ladies to be made up into boots, having been obtained, as they said, from England. About that time I saw similar silk and rubber gores in boots which were brought from England. After that I used gores cut out of larger pieces, which I cut out as I wanted to use them.

Int. 3. How did the gores that came in sets, so far as material and elasticity is concerned, compare with the woven gores now used, that are cut from strips of webbing by you?

Ans. They were very similar to the present.

Int. 4. When did you use those gores that came in sets?

Ans. I believe previous to the American manufacture. I don't remember seeing any such American woven gores before that. I think this was previous, but I'm not prepared to swear to it. It is my strong impression that it was previous to my leaving M'r Hill, which was in 1835.

Int. 5. Which did you use first for gores, that you cut from strips, or pieces of webbing—the English or the American?

Ans. The English, I think, decidedly; I've no doubt in my mind about it.

Int. 6. Look at Exhibit B B and state whether that is a license to you from Charles Winslow, and whether you first used elastic rubber gores cut by you from strips of imported webbing before or after the date of that license.

Ans. I did before that; I have no doubt about it.

1319 Int. 7. How did that webbing so first used by you cut from strips compare with the all-silk webbing now used?

Ans. It was very similar. I suppose they have improved on it. When that was laid aside it would lose its elasticity and perish.

Int. 8. How did that webbing which you first used cut from strips compare with Exhibit D D, now shown you?

Ans. It was very similar apparently, but I don't suppose it was so good as that; I suppose they have improved upon it since that time. The elasticity was about the same, and everything appeared to be similar to that.

NOVEMBER 23, 1869.

(Complainant objects to the testimony of Robert Knott as incompetent.)

Cross-examination, de bene esse, by M'r Smith:

Cross-int. 1. What age were you when you came to this country?

Ans. I came in 1821, and was born in 1792. I was about thirty years old.

Cross-int. 2. What occupation did you follow before you came to this country?

Ans. Ladies' shoemaker. I never followed any other.

Cross-int. 3. Did you ever see any kind of weaving, or have you ever seen or been in a weaving manufactory?

Ans. I have seen weaving, but only by accident, as it were. I have seen it in London when I was a boy. I saw it before, at Spitalfield. Didn't examine it. I know nothing about weaving.

Cross-int. 4. Where did you reside from 1840 to 1850 and have your place of business?

Ans. In Boston, and had my place of business on School street, in Boston.

Cross-int. 5. When you see a woven fabric, do you know and can you describe the manner that it is woven and the construction of the fabric?

Ans. No, sir. I know nothing about weaving, as I told you before.

1320 Cross-int. 6. You mentioned in your direct examination that parties brought foreign gores of English make for you to insert in their boots. Please mention their names and where they resided.

Ans. I don't know as I could, any particular names. It is hardly safe to say any name—not the early part of the time. They used to come tacked together, four in a bunch, and I used to put them in.

Cross-int. 7. Can you mention any name, in any part of the time?

Ans. Well, I have a faint impression of M'r's Abbott Lawrence, and some of her friends.

Cross-int. 8. Where did she reside when you inserted those gores for her in her boots?

Ans. I couldn't tell you.

Cross-int. 9. State, as near as you can, when it was you inserted the gores in her boots for her.

Ans. I couldn't tell within a year or two or three; but it was previous to the Winslow patent.

Cross-int. 10. How do you fix that date?

Ans. Oh, because we had made a number of pairs before his patent came along.

Cross-int. 11. Please describe the gores in those several pairs, of what materials they were made, and how they were constructed.

Ans. Well, as I said before, they came to me tacked together, four in a set. They seemed to be each of them woven separate; the end seemed a kind of raw edge to it, with loose threads, not as though it was cut off. I am ignorant of weaving, but should judge it to have been a kind of composition of silk and India rubber.

Cross-int. 12. Were there not brass springs in them?

Ans. No; not in what I am describing now.

Cross-int. 13. You say that you know nothing about weaving. Can you swear that they were made like Defendants' Exhibit D D?

Ans. Very similar to that to the best of my knowledge.

Cross-int. 14. You say that you have not got any knowledge in weaving or the construction of elastic gores. Will you swear that Defendants' Exhibit D D is exactly the make and the construction that you used as gores for boots before you took out the license from Charles Winslow?

1321 Ans. I can't say exactly, you know. The one that I saw here was of similar construction. I do not know that these things are woven, but suppose they are woven. I know that they are similar.

Cross-int. 15. In your fourth direct interrogatory, the question is asked, "When did you use such gores, that came in sets?" The answer is, "I believe previous to the American manufacture. I don't remember seeing any such American woven gores before that. I think this was previous, but I am not prepared to swear to it. It is my strong impression that it was previous to my leaving M'r Hill, which was in 1835." Will you now swear that it was previous to 1847?

Ans. I will swear that it was previous to my taking a license from Charles Winslow. But I am not prepared to swear that it was previous to my leaving M'r Hill.

Cross-int. 16. Do you know sufficient about woven fabrics so as to know what is called a "corded" fabric, or what is called by manufacturers dice-weaving and double dice-weaving, and when the India rubber is woven in a sheath, and when it is not, in the fabric?

Ans. No; only by general appearance and feeling.

Cross-int. 17. Was the kind last mentioned by me any of the kinds which you used in sets for gores for boots in 1847?

Ans. I know nothing of the kinds of weaving—dice-weaving or any kind.

Cross-int. 18. Do you mean to say that Defendants' Exhibit D D is

woven "goring" and the sets that you used before 1847 are woven "goring"? Is that all you know about it?

Ans. They appeared to be similar, about the same.

Cross-int. 19. Will you please state in the sets that you used before 1847, and Defendants' Exhibit D D, how they were similar and what constituted the similarity?

Ans. By the feeling, the texture and the elasticity, and the threads seemed to be similar though not so good. That's my impression, that they were not so good.

Cross-int. 20. Please state what color was the face and what color was the back of those sets of gores.

Ans. I have the impression—I may be mistaken—they were black both sides.

1322 Cross-int. 21. What place did you do business in when you used these sets of gores? Give the street and number.

Ans. In School street, I am sure, and I think at No. 16.

Cross-int. 22. Did you keep books, and put down names of customers and orders, when at No. 16?

Ans. Always.

Cross-int. 23. Where are those books now?

Ans. Some in existence, and some destroyed, I expect.

Cross-int. 24. What part are in existence and what part destroyed?

Ans. By accident some may have been destroyed. Possibly none of them have been destroyed.

Cross-int. 25. Have you any objection to my examining the books kept by you about that time, and will you give me facilities for so doing, and when?

Ans. I have no objection, and will do as you desire at any time.

ROBERT KNOTT.

Respondents' Exhibit B B.—N. A. P., Examiner.

LICENSE TO USE DAY'S PATENT, GRANTED DUPONT AND HYATT, 1840.

Single.

Whereas letters patent bearing date the thirtieth day of October, one thousand eight hundred and forty, were granted by the United States of America to John H. Dupont and Theodore Hyatt, of the city and county of New York, for certain improvements in the manufacture of boots and shoes, which said improvements consist principally in the inserting of elastic shirred pieces or gores in the side or sides, front or back of boots, bootees, or shoes; a particular description whereof is set out in the specifications annexed to said letters patent.

And whereas the said Dupont and Hyatt, by an instrument in 1323 writing, bearing date the fourth day of March, one thousand eight hundred and forty-seven, did sell, assign, and transfer the said letters patent, and all the rights thereby secured and intended to be secured, to Horace H. Day, of the city and State of New York.

And whereas the said Horace H. Day, by two instruments in writing, the one bearing date the fourth day of March, one thousand eight hundred and forty-seven, and the other bearing date the twenty-ninth day of March, one thousand eight hundred and forty-seven, did sell, assign, and transfer to Charles Winslow, of Lynn, in the county of Essex and State of Massachusetts, the sole and exclusive right, license, and privi-

lege to use said rights secured by said letters patent within the States of Massachusetts, New Hampshire and Maine;

And whereas Robert Knott, at No. 16 School street, of the city of Boston, county of Suffolk and State of Massachusetts, desires to take a license and privilege to use a part of said rights for the manufacture of boots, bootees, shoes, or coverings for the feet, secured by said letters patent within the city of Boston, subject to the conditions, and limitations and on the terms hereafter mentioned:

Now these presents witness that the said Charles Winslow, for and in consideration of the covenants and agreement hereinafter contained on the part of Robert Knott to be kept and performed by him, has given and granted, and does hereby give and grant, unto Robert Knott, the right, license, and privilege to manufacture gentlemen's, ladies', misses', boys', and children's boots, bootees or half boots, and shoes, and no other style or kind, with any or all of said improvements described in said letters patent, in and throughout the said city of Boston, and no other place or places; provided always, nevertheless, that nothing herein contained shall be deemed or construed to extend to or cover the manufacture or use of said improvement for India-rubber boots, bootees, or shoes.

And the said Robert Knott, for and in consideration of the premises, does hereby, for himself, his representatives and assigns, covenant and agree to and with Charles Winslow to pay to him or his representatives or assigns, for each and every pair of boots, bootees or half boots, and shoes, or coverings for the feet, so cut or caused to be cut by the
1324 said Robert Knott, with any or all of said improvements secured in or by said letters patent, the following tariff of prices, to wit: for each and every pair so cut for ladies' boots, twelve and a half cents per pair; for each and every pair for ladies' half boots or bootees, ten cents per pair; for each and every pair for ladies' shoes, five cents; for each and every pair for misses' boots, ten cents; for each and every pair for misses' half boots or bootees, six cents; for each and every pair for misses' shoes, four cents; for each and every pair for gentlemen's foxed or gaiters, twelve and a half cents; for each and every pair for gentlemen's calf or leather boots, ten cents; for every pair for children's boots or bootees, six cents; for every pair for children's shoes, three cents.

And the said Robert Knott hereby, for himself and his legal representatives, *hereby* covenants and agrees to and with the said Winslow that he, the said Robert Knott, shall and will, now and from henceforth, purchase from said Winslow, his representatives or assigns, all the shirred goods he shall need or use for said purposes, under a penalty of five hundred dollars and a forfeiture of this agreement and of all rights hereunder.

It is further stipulated and agreed that Robert Knott shall not sell or give away any of the elastic material purchased as aforesaid for the purpose of making boots or shoes, to any person or persons not authorized to use said Dupont and Hyatt's patent aforesaid.

Further, it is hereby stipulated and agreed that said Robert Knott shall stamp each and every pair of boots, bootees, or shoes so made and manufactured by or for him with the words "Day's patent, granted Dupont and Hyatt, 1840; manufactured by Robert Knott." And the said Robert Knott, on the considerations aforesaid, stipulates and agrees with the said Winslow that he will keep a true account of all the boots, bootees, or shoes so cut by or for him, in a book kept expressly for that purpose, which shall be open at all times to and for the inspection and examination of the said Winslow; and at the expiration of

every three months, or as much oftener as the said Winslow may prefer, the said Robert Knott shall pay over to him or his legal representatives, upon demand, whatever is due by said tariff, for each and every pair of boots, bootees or half boots, or shoes, or coverings for the feet,
1325 which shall have been so cut by or for the said Robert Knott, and shall not then have been already paid for; the said Robert Knott, whenever required by the said Winslow, or his legal representatives, to make oath to the truth of his account. And if the said Robert Knott shall make default in the payment of any sum of money due to the said Winslow by virtue of this agreement, then, and in that case, the right to use the license and privilege above granted shall utterly cease, and revert to said Winslow, the said Robert Knott and his legal representatives being and continuing, nevertheless, bound, and hereby promising to pay the amount of the said consideration to the said Winslow, his legal representatives, or assigns, under a penalty of five hundred dollars.

And the said Winslow reserves to himself, his legal representatives, and assigns, the full right and authority to annul this instrument and the agreement therein contained, at his or their own will and pleasure, by giving to the said Robert Knott ten days' notice of his intention so to do. And the said Robert Knott further promises and agrees, on the considerations aforesaid, in case of default in the payment by him of any sum due to said Winslow, by virtue of this agreement, or upon the demand of said Winslow, or his legal representatives, or assigns, to execute and deliver to him or them, when thereto requested, a reconveyance of said license and privilege, and a cancellation of all other obligations herein contained on the part of the said Winslow to be performed and fulfilled.

In witness whereof the said parties to these presents have hereunto, a d to a counterpart, set their hands and seals, this fifteenth day of September, anno Domini one thousand eight hundred and forty-seven.

CHARLES WINSLOW. [L. S.]
ROBERT KNOTT. [L. S.]

Sealed and delivered in the presence of—
R. S. COLLYER, for Charles Winslow.
THOMAS KNOTT.

1326 *Deposition of Josiah Harriman.*

NOVEMBER 25, 1869.

Direct examination by Benjamin Dean, esq., of counsel for respondents:

Int. 1. State your name, age, residence, and occupation.

Ans. Josiah Harriman; age, 23 years; residence, Chelsea, Mass.; occupation, weaver—in which business I have been engaged for between ten and eleven years. I was employed by Hodges & Sons, elastic manufacturers, in Leicester, England, all the *the* time until I left England, on the 30th of September last, and since I have been here I have been employed in the same business.

Int. 2. What kinds of elastic fabrics were made by Hodges & Sons during your employment by them, and for what purposes were they used?

(Objected to as inadmissible and incompetent.)

Ans. They made the rack and pinion cross shot—the rise and fall—and the single web. They were all used for shoe goring.

Int. 3. What do you mean by the "single web"?

Ans. That made with one shuttle.

Int. 4. Is the rubber warp stationary, or does it rise and fall in making the single web?

Ans. It rises and falls the same as the other warps. To each rubber cord there are four threads, and all the rubber rises with two of them and falls with two—except in a fine loom, where there are only two threads and the rubber cords all rise and fall with one thread. The other threads alternate, sometimes one with the rubber and sometimes with the other.

Int. 5. What do you mean by the fabric that you call the rack and pinion cross shot, and the fabric you call the rise and fall?

Ans. In the rack and pinion cross shot the rubber is still and the other cords change up and down, and the shuttles cross one another—silk at the top and cotton at the bottom. The batten is still. In the rise
1327 and fall the rubber works with the other cords, the same as the single web. The rubber rises for the bottom shuttle and falls for the top one, as the batten, which also falls and rises. The shuttles do not cross but follow one another—silk at the top and cotton at the bottom.

Int. 6. Did you know these silk and cotton goods as union goods in England, and are union goods made alike in both looms, the loom with the stationary warp and the loom wherein the rubber warp rises and falls?

Ans. I did. They are all called union goods in England. They are made on both looms.

Int. 7. Are the rubber warp threads in each case covered on one side by the silk web and on the other by the cotton?

Ans. Yes.

Int. 8. Look at exhibits now shown you, marked Harriman Exhibits A, B, and C, respectively, and state whether you made such goods in England, and which is the union web and which the single web.

(Objected to as immaterial.)

Ans. Exhibit C is the union web. Exhibit A is single cotton web. Exhibit B, all silk single web.

Int. 9. On how many looms did Hodges & Sons make union web? How many of them had the standing warp and how many of them had the rise and fall rubber warp?

(Objected to as immaterial.)

Ans. I think over seventy, altogether. Eighteen had the standing warp, the rest had the rise and fall rubber warp.

Cross-examination by M'r Smith, complainant, de bene esse:

Cross-int. 1. You say in your direct examination that you have been engaged in making these goods eleven years, and that you are only 23 years of age. Were you capable of working one of those large looms when you were twelve years of age?

Ans. Yes. I went to work for my uncle. He had two looms. I worked on a six-shuttle loom; then I went off of that on to an eight-shuttle loom. I was on the eight-shuttle loom twelve months; then I went off of that on to a ten-shuttle loom. I was on that about
1328 three months; then I left that and went on a rack and pinion loom. Then that stopped, and I went on a rise and fall; then I went on a single one. The last I wove, I wove terry and union. I had two looms at the same time. I was on them till about three weeks before I left England for America. I was capable of managing a six-shuttle loom when I was learned.

(Answer objected to as irresponsive.)

Cross-int. 2. Had you the strength and length of arm to reach over the lowest piece to handle your warps, and the strength to tighten and slacken your rubber warps and movable warps, when required?

Ans. Yes.

Cross-int. 3. Did you ever know or see any youth of such age, except yourself, work on such kind of looms?

Ans. Yes; plenty.

Cross-int. 4. Name them.

Ans. George Johnson, James Wells, Henry Wells, George Jones, and I can name others if you wish.

Cross-int. 5. State their ages.

Ans. Henry Wells wasn't twelve years old when I came away. George Johnson is about thirteen years old, and the others about the same age. James Wells had been working there for about two years, and isn't fourteen years old yet. They live at Highton, near Leicester.

Cross-int. 6. Have you ever seen any one so young in this country working on such looms?

Ans. No; I've never seen any goring woven in this country yet.

Cross int. 7. What kind of weaving are you employed on now?

Ans. On suspenders. I have two looms.

Cross-int. 8. You stated in your direct examination that, in the rack and pinion looms, that you worked with a standing warp, wherein you stated that the shuttles passed each other, that all the rubber cord was stationary—are you positive of that?

Ans. Yes; they were. In all the rack and pinion looms the rubber cords were stationary.

Cross-int. 9. Describe the selvedge that was made on those goods.

Ans. It was not so good and clear as the rise and fall.

1329 Cross int. 10. Was it made similar to that, Exhibit Harriman C?

Ans. Yes; made like that—on the same principle—only not so clear.

Cross-int. 11. Please state what you mean by "not so clear."

Ans. Because when one shuttle pulls one way and one the other, you can't make such good selvedge as you can on the rise and fall, because you can't cover the cotton on the selvedge as well. You can regulate your springs better than you can on the rack and pinion.

Cross-int. 12. Look at respondents' Harriman Exhibit C and explain how you get the silk around the edge of the rubber thread.

Ans. All what it is, is that when the top shuttle passes through, one rubber rises for it to go under it one side, and on the other side, when it comes back it falls—both rubber and edge wire.

Cross-int. 13. Then it is not true, as you stated in your direct examination, that all the rubber warps are stationary, is it?

Ans. Yes; all but two threads in each piece.

Cross-int. 14. Look at Exhibits Harriman A, B, and C, and say if you ever saw them before to-day.

Ans. No, sir; I never saw them before.

Cross-int. 15. As you never saw these goods before, and did not see them made, how do you know they were made in the same manner as those made by Hodges & Sons of England?

Ans. Because they are just like them.

Cross-int. 16. Is that the best explanation you can give?

Ans. Well, there is another one—because they are all on the same principle.

Cross-int. 17. Please explain what you mean by "principle."

Ans. Very near all the looms are the same make, and the rack and pinion is the same make.

Cross-int. 18. Please state how you know all these things when you say younever saw such goods woven in this country on the looms here.

Ans. Because they are on the same principle as they are at home where I was.

Cross-int. 19. I repeat the question; explain what that principle is.

1330 Ans. The rack and pinion, they work with wheels instead of pegs. The driver is worked inside the batten, and the wheels are worked in cogs in the driver and in the shuttle. They are worked with treddles and with arms.

Cross-int. 20. I do not inquire anything about the looms, but how you know that these goods are made similarly to Hodges & Sons, when you have never seen the looms here and never saw the goods before?

Ans. Because I know they can't make them any way else. This one, Exhibit C, is made in the rise and fall; it could be made on the rack and pinion, but wouldn't make good work.

Cross-int. 21. Is that the best explanation you can give?

Ans. Well, that is how it will be.

Direct examination resumed:

Int. 10. Look at exhibit now shown you, marked Harriman Exhibit D, N. A. P., examiner, and say how it is made.

Ans. On the rack and pinion.

Int. 11. Why would not Exhibit C, made on the rack and pinion, make good work, as you said in your answer to 20th cross-interrogatory?

Ans. It would make good work, so that you couldn't tell the difference. I meant that Exhibit B wouldn't make good work. They have tried it and failed. They could make A, because it is cotton, and they are not so particular about that. On the silk, like Exhibit B, it is so soft that when the two shuttles pull in opposite directions at the same time, it injures both the silk and the selvedge.

JOSIAH HARRIMAN.

1331 *Deposition of Horatio G. Knight.*

NOVEMBER 26, 1869.

Direct examination by Benjamin Dean, esq., of counsel for respondents:

Int. 1. State your name, age, residence, and occupation.

Ans. Horatio G. Knight; age, 52 years; residence, East Hampton, Mass.; occupation, manufacturer.

Int. 2. Are you a member of the executive council of this commonwealth?

Ans. Yes, sir.

Int. 3. What knowledge have you of and what experience have you had in the manufacture of suspenders? Please state fully.

Ans. I had the knowledge of the manufacture of suspenders for several years prior to 1847, by a somewhat intimate acquaintance with manufacturers of and dealers in those goods; especially by my acquaintance with M'r Merriman, of the Hotchkiss & Merriman Manufacturing Co., and M'r Warren, of the Warren & Newton Manufacturing Co.; with both of whom I have traveled and stopped at the same hotels. In consequence of the knowledge obtained from them, as

manufacturers of these goods, and my acquaintance with the dealers in the same, I advised my senior partner, Samuel Williston, to engage in the manufacture of suspenders. Accordingly, a company was organized at Easthampton, under the name of the Nashawannuck Manufacturing Co., who engaged in the manufacture of suspenders in the year 1848. This company was at first a copartnership, and afterwards a corporation was formed under the same name. In 1848 we commenced in a very small way, and purchased, at first, a few looms in Philadelphia; afterwards a few more in New Haven. The business gradually increased, and has now become a business of considerable magnitude. The goods first produced were what were known as plain webs, and have always been so called, to distinguish them from fancy and corded goods. We have continued to manufacture those plain goods to the present time. We have also made corded and fancy webbings in connection with them.

1332 Int. 4. Describe the plain webs you speak of.

Ans. In them the warp is composed partly of cotton and partly of Indian rubber; the rubber lying between the cotton threads and parallel with them. The filling is of cotton, and binds the warp of cotton, and covers the rubber thread.

Int. 5. Was there anything over the rubber threads at top and bottom, except the filling; if yes, what?

Ans. There was nothing but the filling.

Int. 6. How was the filling held to the rubber warp or strands?

Ans. By being interwoven with the cotton warp lying between the rubber threads.

Int. 7. Did the filling, in passing through the shed, go over some of the rubber warp threads and under others, or how did it pass?

Ans. I think the filling passes, alternately, over all the rubber warps, and under all of them. I refer to the plain web of which I have spoken.

Int. 8. What became of the goods manufactured by said Nashawannuck Manufacturing Co.?

Ans. They were all sold in the market.

(Complainant, who is not present, when here, desired that all objections should be taken to the above deposition and the right to cross-examine reserved.)

DECEMBER 16, 1869.

Cross-examination by Chas. F. Blake, esq., of counsel for complainant:

Cross-int. 1. To what department of the business did you attend during the years 1848, '49, and '50?

Ans. During those years I sold some of the goods which were produced, and advised with the men who had special charge of the manufacturing.

Cross-int. 2. To what department, at that time, was your attention mainly directed?

Ans. During that time I was chiefly occupied with other business.

Cross-int. 3. Prior to 1848, had you any practical experience or knowledge of weaving?

1333 Ans. I don't know what practical knowledge of weaving implies. I had had no experience.

Cross-int. 4. Have you now?

Ans. I have not.

Cross-int. 5. In 1848-'50, were you consulted or did you advise as to

the best way of arranging the warp and weft of elastic suspender webbing?

Ans. I was consulted and advised with regard to the kind of goods that should be made, which involved the arrangement of the weft and warp.

Cross-int. 6. A little more particularly, was your attention specially called to the manner in which the warp and weft interlocked in these goods, or was not your attention turned rather to their style, appearance, and marketability?

Ans. My attention was called to both, but more especially to the latter.

Cross-int. 7. Who fitted up the looms for the Nashawannuck Company?

Ans. I cannot tell who the mechanics were.

Cross-int. 8. Did you discuss with any body whether the filling ought to go over all the rubber warps or over and under the rubber warps; and, if so, with whom?

Ans. I do not recollect any such discussion.

Cross-int. 9. When was your attention first called to the manner in which the wefts crossed the warps in elastic fabrics?

Ans. In 1848.

Cross-int. 10. What called your attention to it?

Ans. I had occasion to consult and advise with the practical men who were engaged in the manufacture of goods.

Cross-int. 11. Did your advice to them extend to the details of practical weaving, or was it confined to the general style and appearance of goods?

Ans. My advice did not extend to the details of practical weaving, nor was it wholly confined to the general style and appearance of goods. So far as the manufacturing was concerned, I had to do chiefly with the general style and appearance of goods.

1334 Cross-int. 12. Did your company, between 1848 and '50, make any webbing in which the weft interlocked with the warp in a different manner from that described in your testimony?

Ans. I cannot remember the date when the company commenced the manufacture of webs of other styles than I have described.

Cross-int. 13. Did your company, between 1848–'50, make any webbing in which the rubber strands were covered with cotton warp?

Ans. I am not certain that it did, during that period.

Cross int. 14. By what number were the goods first made by your company known?

Ans. I cannot remember the numbers.

Cross-examination by M'r Smith:

Cross-int. 15. Of whom did you purchase, in Philadelphia, the first looms which you put up?

Ans. I do not recollect the name of the party of whom the company purchased.

Cross-int. 16. Can you state in what part of Philadelphia they resided?

Ans. I cannot.

Cross-int. 17. Were they new or second hand looms, and how many were purchased?

Ans. I think, at the first purchase, there were two, and that they were new looms, and made by a man who had made such looms before.

Cross-int. 18. In what year did the Nashawannuck Company become known as a firm?

Ans. I think in the year 1848.

Cross-int. 19. Were not you and M'r Williston engaged in the manufacture of buttons until the year 1850?

Ans. We were, and are still.

Cross-int. 20. Did you not state, in your previous testimony, that you discontinued making buttons after becoming interested in the Nashawannuck Company?

Ans. I did not.

Cross-int. 21. Can you mention any names in Boston, New York
1335 or Philadelphia, or elsewhere, to whom the Nashawannuck Company sold suspender webbing of their own manufacture? And, if yes, state to whom.

Ans. I remember well some of the houses who bought those goods, or to whom they were consigned for sale, during the first few years of its business. Among others, Levi Cook & Co., of New York, and F. V. Krug & Co., of Philadelphia. There was a firm of Burnham & Baldwin, or Burnham, Baldwin & Co., of New York; also Alling & Minot, of Boston, now Allen, Lane & Co., of Franklin street, Boston.

HORATIO G. KNIGHT.

1336 Circuit court of the United States, district of Massachusetts.
In equity.

WILLIAM SMITH
v.
NATHAN NICHOLS.

WILLIAM SMITH
v.
GLENDALE ELASTIC FABRICS COMPANY.

EVIDENCE FOR RESPONDENTS.

Taken pursuant to the 67th rule of the Supreme Court of the United States in equity, as amended, before

N. AUSTIN PARKS, ESQ.,
Examiner.

Present, M'r Smith, the complainant, personally; Benjamin Dean, esq., of counsel for respondents.

SEPTEMBER 7, 1869.

Counsel for respondents here puts in evidence letters patent granted by the Government of Great Britain to James Vincent Desgrand, enrolled May 14, 1833, and numbered 6334; also, letters patent granted by the Government of Great Britain to Christopher Nickels, Thomas Ball, and John Woodhouse Bagley, and enrolled June 24, 1852, and numbered 13880; also, letters patent of the Government of Great Britain granted to Christopher Nickels, enrolled December 3, 1847, and numbered 11729; also, letters patent granted by the Government of Great Britain to Robert William Sievier, enrolled January 17, 1833, and numbered 6366; also, the following extract from a note on the forty-
1337 eighth page of a volume entitled "The Law and Practice of Letters Patent for Inventions, Statutes, and Practical Forms and

Digest of Reported Cases. By Thomas Webster, esq., of Lincoln's Inn, special pleader. Imprinted at London in the year 1841," to wit: "The use of elastic threads or strands of India rubber previously covered by filaments wound round them was known before; the use of yarns of cotton or other non-elastic materials was also known before; but the placing them alternately side by side together as a warp, and combining them by the means of a weft when in extreme tension and deprived of their elasticity, appears to be new; and the result, viz. a cloth in which the non-elastic threads form a limit up to which the elastic threads may be stretched, but beyond which they cannot, and therefore cannot easily be broken, appears a production altogether new. It is a manufacture at once ingenious and simple. It is a web combining the two qualities of great elasticity and a limit thereto." Also, the report of the case of Cornish et al. vs. Keene et al., embraced in pages 281 to 294, inclusive, of volume second of "Reports of cases argued and determined in the court of common pleas, with a table of the names of cases and digest of the principal matters, by W'm Hodges, esq., of the Queen Temple, barrister at law; imprinted at London in the year 1838," and particularly the following passages contained therein, that is to say:

SEPTEMBER 8, 1869.

1. "In effecting the second improvement for the production of an elastic woollen cloth, I introduce into the loom, among the longitudinal or warp threads, cords or strands of India rubber, or I constitute the warp entirely of such strands, either covered with a filamentous material or not, and through or between the warp-threads, cords, or strands of warp, I pass the transverse weft or shoot-threads or yarns in the ordinary way of weaving, for the purpose of effecting that intervention which produces the cloth."

2. "The whole case turned upon the validity of the patent as it respected the elastic cloth or web, which was the third object stated to have been attained. It appeared that this fabric was a cloth or web which consisted of strands of India rubber, covered in the manner stated in the specification, interstratified with threads of cotton, silk, or other fibrous matter in the same plane, which strands of India 1338 rubber were placed at such distances from each other as might be required. Any degree of contractile force was given by increasing the number of India rubber strands, but as the number of these strands were diminished the fabric became proportionately porous. The last-mentioned manufacture was described as being very advantageous when used as surgical bandages, because any degree of elasticity which might be required was produced, whilst the bandage was light and porous. The elastic and non-elastic strands were united together by the weft thread, but longitudinally they were independent of each other; and the non-elastic threads sustained no tension until the web was drawn out to a considerable extent. The consequence was, that the elasticity of the fabric was not impaired until the tension came to the point at which the elasticity was limited, and then the non-elastic strands preserved the other strands from being broken."

3. "The use of elastic threads or strands of India rubber previously covered by filaments wound round them was known before. The use of yarns of cotton, or other non-elastic material, was also known before; but the placing them alternately side by side together as a warp, and combining them by means of a weft when in extreme tension and deprived of their elasticity, appears to be new; and the result, namely, a cloth in which the non-elastic threads form a limit up to which the

elastic threads may be stretched, but beyond which they cannot, and therefore cannot easily be broken, appears a production altogether new. It is a manufacture at once ingenious and simple. It is a web combining the two qualities of great elasticity and a limit thereto."

Also, the following passages, found in a volume entitled "New Cases in the Court of Common Pleas and other courts, with table of the cases and principal matters; by Peregrine Bingham, of the Middle Temple, esq., barrister at law, vol. III, etc.," imprinted at London in the year 1837, in the report of the case of Cornish & Sievier vs. Keene et al., on the 574th and 586–7 pages, respectively:

1. "By thus combining the strands of India rubber with yarns of cotton, flax, or other non-elastic material, I am enabled to produce a cloth which shall afford any required degree of elastic pressure, according to the proportions of the elastic and non-elastic material."

2. "The use of elastic threads or strands of India rubber previously covered by filaments wound round them was known before; the
1339 use of yarns of cotton or other non-elastic material was also known before; but the placing them alternately side by side together as a warp, and combining them by the means of a weft when in extreme tension and deprived of their elasticity, appears to be new; and the result, namely, a cloth in which the non-elastic threads form a limit up to which the elastic threads may be stretched, but beyond which they cannot, and therefore cannot easily be broken, appears a production altogether new. It is a manufacture at once ingenious and simple. It is a web combining the two qualities of great elasticity and a limit thereto."

Counsel for defendants here puts in evidence from the "Repertory of Patent Inventions and other Discoveries and Improvements in Arts, Manufactures, and Agriculture, being a continuation on an enlarged plan of the Repertory of Arts and Manufactures, a work originally undertaken in the year 1794, and still carried on with a view to collect, record, and bring into public notice the useful inventions of all nations, new series, vol. 6, reprinted and published in London in the years 1836 and 1837," the following pages, viz, pages 89 to 92, inclusive; pages 102 to 117, inclusive; pages 176 to 191, inclusive; and pages 242 to 262, inclusive; and particularly calls attention to the following passages, that is to say: "Originally, when first India rubber was used in this country, the mode was to introduce the warp or longitudinal thread in the fabric to be woven of India rubber (caoutchouc) drawn out into long strands. It is a peculiarity belonging to this article that, though very elastic, if drawn out to its extreme length, and kept in that state of tension for a certain time, it loses its elasticity. Those strands were kept stretched to their full length till that effect was produced, then it was introduced into the warp and the woof weft or transverse thread was introduced across those longitudinal threads of India rubber. After the article was woven it was necessary to restore the elasticity which had been lost through the circumstances I have mentioned. The passing of a hot iron over the surface has the effect of restoring the elasticity to the India rubber (by which name I will call the article, as being most familiar), and then I believe that the elasticity exists to the extent of giving a contracting power of one-fifth of the whole length. In the article that I have mentioned you will observe the India rubber was in no way covered except so far as the transverse threads of cotton or linen made it so. They in truth scarcely
1340 formed a part of the fabric; and if any of them broke, the effect

you may readily suppose was very much to destroy the usefulness and power of the fabrics.

"Afterwards, before the India-rubber strand was introduced into the warp, it was what is called braided; that is to say, it was covered round in two opposite directions with a fine filament of some thread or other, and the India-rubber strand being then wound round or braided (an operation very familiar to persons engaged in the trade), but that was not found to answer; the braiding partly remedied some of the defects but not entirely; that plan was discontinued, and then another was adopted which caused the articles I now hold to be made, and that mode was this: The longitudinal strands of India rubber were placed in the loom, but then above and below them were placed strands of cotton or other threads, so that the fabric when made consisted of three distinct layers (if I may so say) of threads, the top and bottom of cotton or other material of that description, the layer in the middle of India rubber. That produced a thick and heavy article, and besides that the India rubber was counteracted by the surface above and below, and though the India rubber regained part of its elasticity by the application of a hot iron; its power was restrained by the materials with which it was connected; the elasticity was therefore partial. Thus the articles were so heavy and so little elastic as to be found very little suited for surgical purposes. M'r Sievier, the patentee, in this state of things, addressed his attention to the subject, and the article which he has produced is the one I now hold, and the superiority consists in several particulars. The India rubber exercises the power of its elasticity to the full extent which it possesses. The India rubber controls the degree of expansion and contraction of which the article will admit. In the next place, it is extremely light; it is porous; and besides that, from the material which is used, it can be manufactured at a considerably less cost than the old article; and I am satisfied you will find, in the course of the evidence, that no sooner had M'r Sievier introduced his invention into the market than it excluded all the old articles. Now, gentlemen, having stated to you the properties of the articles made under the patent, I will describe how those properties are produced. In the old manufacture the entire of the layers or plane was of strands of
1341 India rubber close together. M'r Sievier introduced the India rubber only at intervals; there are, therefore, strands of India rubber, with intervals filled up with threads of cotton or other material. These India-rubber strands being placed in the loom in their state of greatest extension, when they cease to exercise their contractile power the strands of cotton or thread are also placed in the warp, not merely in the woof, but introduced into the same plane, so that the entire surface consists, first of several strands of cotton or thread, then strands of India rubber, and so on to the width of the intended fabric; when that is made a hot iron is applied to restore its elasticity; the effect of which is, that the intervening space being so light and thin, the India rubber is the commanding ingredient."

Also, the following: "John Rogers sworn, examined by M'r Sergeant Stephens. I am a wholesale brace manufacturer; have been so for some time, from its first introduction into this country, which was about 1829. In addition to braces, surgical bandages are made of the web, and garters and things of that description. I am acquainted with the article made under Sievier's patent. The article No. 3 is according to the patent; there are various specimens of the article No. 3; they are all according to the patent. I have bought articles of that description from several; I never purchased any such before January, 1833. I

have pu chased them largely since from the plaintiffs, Cornish & Sievier, from the date of the patent to this time. I am acquainted with the specimens, No. 1 and No. 2; never knew the articles No. 3 before the patent; those before made differed materially from the patent articles. In No. 3 the warp is composed of India-rubber threads covered or braided, and cotton yarns or cords which form part of the same warp; the yarn is between each strand of India rubber instead of being above or below. No. 3 has advantages which Nos. 1 and 2 have not; it is more elastic for surgical bandages, it is lighter, and is much cooler and cheaper. This is owing to there being a less number of India-rubber strands; the weft is of cotton yarn."

Also, the following: "The peculiarity of No. 3 is, that it consists of filaments or strands of India rubber, interstratified with threads of cotton or other textile matter in the same plane; and those strands of India rubber may be placed at any distance asunder, and the intervals in the same plane filled up with common thread."

Also, "No. 1 is composed wholly of elastic India-rubber threads,
1342 with a platting and cotton weft to tie them together. No. 2, the India-rubber threads are not covered by platting; they are covered in the weaving. This has a non-elastic warp used. In No. 2 the object of the non-elastic is to enclose the elastic strand; it makes a sheath. The longitudinal non-elastic threads are used as a covering for the elastic threads—it is a double cloth, in fact. There is a cloth at the back of the elastic threads and in front; and the elastic threads may be drawn out without disorganizing either of these cloths. No. 3 is made with the intervening non-elastic threads, forming a part of the warp, with elastic threads covered with platting and non-elastic threads intervening between them, form altogether the warp in the same plane; in fact, in place of being three (as in No. 2), they are one; they constitute one fabric."

(M'r Smith here states that the taking of this testimony may go on, but that he shall send in his written objections to the magistrate. This the counsel for the defendants does not object to.)

SEPTEMBER 13, 1869.

Counsel for respondents also offers the following passage, viz:

"M'R ATTORNEY-GENERAL: With submission, my lord, I can, in a few words, point out a material distinction between the specification of the patent of 1831 and the specification of the patent of 1832; these are to be the elastic and non-elastic working separately and independently of each other, not merely that the elastic should be covered, and that there should be a combination of elastic and non-elastic, so that the whole should form one mass, as if there was a rope or cable, a cylindrical rope or cable, to be formed; that is the specification of 1832. In the specification has been described the elastic and non-elastic in the same plane, working independent of each other, so that they may be contracted, the one independent of the other."

And counsel for respondents saith that he forbears to quote more at length, as he desires to have all the pages he has put in considered as describing the complainant's fabrics; said pages containing a detailed report of the case of "Cornish and Sivier v. Keene and another;" and he further offers in evidence the same report contained in the second volume of a work entitled "Law Reports of Patent Cases, by William Carpmael, esq., etc., etc," imprinted at London, in the year 1851; and he further offers letters patent of the Kingdom of Great Britain
1343 granted to Thomas Hancock, enrolled August 8, 1820, and numbered 4451.

OCTOBER 15, 1869.

Complainant offers the following, in pursuance of notice at close of testimony put in upon the 10th September by the respondents.

Objections (de bene esse) against the respondents' bringing new matter on the record:

I.

It is mere sham to procrastinate and prolong the suit. All the additional testimony which they attempt to put on the record was known to the respondents when they put in their answer to the bill of complaint, and has no bearing in the matter at issue, as my patent is an improvement on Robert William Seiver's patent and all others.

II.

That patent and many others was brought forward and contested in the Patent Office in my reissues of my patent in 1867 and 1868, and all publications to be found with any distant bearing upon corded fabrics, for ninety years, were brought forward against me; but all opposition against me more firmly established my claims, in spite of all the frauds practised upon me by some one in the Patent Office, as the evidence will show, upon the record.

III.

They have referred to several patents in their answer, and about twenty-five different persons and firms that knew of my improvement before my claim, and they have not as yet taken one particle of testimony, although ten months have elapsed since suit was brought.

IV.

That a motion is now pending in court to amend their answer in the very matter they have put upon record, and I protest against such practice to forestall the action of court.

V.

When such amended answer is put upon the record, it must be put in full, and not a mere reference to title and page.

1344

VI.

When a foreign patent is referred to, the patent must speak for itself; not what may transpire at the trial of such patent in any court or elsewhere.

VII.

I protest against the manner of defendants' counsel interfering with my witnesses whilst giving their testimony, also with his giving me notices that he was going to take testimony, also for a motion in court to amend his answer, also a notice that he was going to take testimony in Philadelphia, all upon the same day, when he was under a prior

notice from me to take testimony in my suits, and when the time arrives for his testimony to be taken, according to his notices, he does not take any.

VIII.

I protest against any oral testimony being taken, as he has verbally said he should do so, but has not given the names of the parties whose testimony he is going to take. If such evidence is allowed to come in they will prolong the suit to any extent.

IX.

The defendants have boasted to myself and others that I could not get a hearing before the expiration of my patent, and all their motions in court and all their notices to add new matter, and putting new matter on the record, has that object in view.

WILLIAM SMITH.

OCTOBER 15, 1869.

I further put upon record the Boston Daily Advertiser, of Wednesday morning, October the 13th, 1869, No. 117, 110, Vol. 114, No. 89, on the 9th column, 2nd page, the following advertisement:

"Glendale Elastic Fabrics Co., manufacturers of elastic gussets, webb, cords, sandallings, and loom goods. Stoddard, Lovering & Co., selling agents, 4 Milk street, Boston; 84 Chambers street, New York.

"January 1st, 1866.

"is 2 W, & is TuThtf."

1345 I refer to M'r Lovering's examination, page 20, question 15.

I refer also to the testimony of M'r Dean, the partner of Lovering, page 111th, question and answer 3 and 4.

WILLIAM SMITH.

NOVEMBER 24, 1869.

Respondents' counsel here puts in evidence the following passages from a printed work imprinted at New York in the year 1847, entitled "The Book of the Feet; a History of Boots and Shoes," etc. "By J. Sparkes Hall," "from the second London edition," etc., viz:

1. From the 116 page of said volume the following passage: "About ten years since I first thought of an elastic boot that might possibly remedy in a great measure all the minor evils, and combine many advantages never possessed by any former boot."

2. From the 117 page, the following passage: "My first experiments were a failure, as the manufacture of elastic materials was not so perfect as they are at the present period, and the necessary elasticity could not be gained in any material I could meet with. The difficulty was to get an India-rubber web so elastic that the boot would go on and off, and yet not so soft and yielding as that it would not return again to its original form."

3. The following passage, beginning at the last line of page 117 and ending with the fourth line of page 119, viz: "After several experiments in wire and India rubber, I succeeded in getting the exact elasticity required, and subsequent improvements in materials and workmanship have combined to make the elastic boot the most perfect thing of its kind. I am indebted to the Countess of Blessington and Lady

Charlotte Bacon for some of the earliest hints and suggestions for its improvement; also to M'r's S. C. Hall, the Baroness de Calabrella, and other ladies of literary fame, who were among the first to patronize the invention. One of my earliest customers, a lady of great originality of thought and expression, first induced me to make it an article of universal sale, by saying, 'These boots are the comfort of my life; if you were only to give them a sounding name—if you like, call them lazy boots and turn it into Greek—all the world will buy them, and you'll make your fortune.'

1346 "For many years I have scarcely made any other kind of boots but the elastic; but I have not made a fortune. I am happy, however, if in any way I have contributed to the comfort of my fellow-creatures, or been instrumental in affording employment to my own countrymen."

(Complainant objects to the admission of the foregoing as incompetent, frivolous, and silly.)

NOVEMBER 25, 1869.

Respondents' counsel here puts in evidence the following documents, viz:

1. Certified copy of file and contents in the matter of the application of Enoch Thomas, filed December 4, 1838, and withdrawn.

2. Certified copy of entries made on the Application Book of Patent Office relating to the application of Enoch Thomas for a patent for a truss, with dates of filings of said applications.

3. Certified copy of entry made on Machinists' Book of Patent Office December 20, 1838, relating to a model for a truss received that day.

4. Certified copy of entry made on Machinists' Book of Patent Office in the matter of the application of Enoch Thomas, showing the date on which model was received.

5. Certified copy of file, contents, and drawing in the matter of letters patent granted to Enoch Thomas, dated March 12, 1840.

6. Certified copy of file and contents in the matter of letters patent granted William Smith, dated April 5, 1853, for imp't in looms.

7. Certified copy of file and contents in the matter of the extension of letters patent granted William Smith, April 5, 1853, extended seven years March 28, 1867, for imp't in weaving corded fabrics.

8. Certified copy of file and contents in the matter of reissued letters patent granted W'm Smith, dated April 5, 1853, extended 7 years, reissued June 18, 1867. Reissued January 14, 1868.

9. Certified copy of file and contents in the matter of reissued letters patent granted W'm Smith, dated April 5, 1853, extended 7 years, reissued June 18, 1867. Reissued June 30, 1868.

10. Certified copy from the record of Patent Office of decision of examiner-in-chief in the matter of the application of W'm Smith for reissue of patent granted him April 5, 1853.

11. Certified copy of file contents in the matter of letters patent
1347 granted to W'm Smith April 5, 1853, extended 7 years, reissued June 18, 1867. Reissued January 14, 1868. No. 2844.

12. Certified copy of file and contents in matter of letters patent granted to W'm Smith April 5, 1853, extended 7 years, reissued June 18, 1867. Reissued January 14, 1868. No. 2656.

13. Certified copy of letters patent granted W'm Smith dated April 5, 1853.

14. Certified copy of extension.

15. Certified copy of divisions A and C of reissue letters patent to W'm Smith.

Certified copy, No. 1.

The United States Patent Office to all to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file and contents in the matter of the Application of Enoch Thomas, filed December 4th, 1838, and withdrawn. Truss.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this second day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

Application to Secretary of State.

NEW ATHENS, *Nov.* 30, *A. D.* 1838.

To the Secretary of State of the United States:

The petition of Enoch Thomas, of the town of New Athens, in the county of Harrison and State of Ohio, respectfully represent:

That your petition' has invented a new and useful improvement 1348 in Truss, which has not heretofore been known or used, the advantages of which he is desirous of securing to himself and legal representatives; he therefore prays that letters patent of the United States may be issued granting unto your petitioner, his heirs, administrators, or assigns, the full and exclusive right of making, constructing, using, and vending to others to be used, his said invention and improvement, agreeably to the Acts of Congress in such cases made and provided; your petitioner having paid thirty dollars into the Treasury of the United States, and complied with the other provisions of the said acts.

ENOCH THOMAS.

PATENT OFFICE, *March 16th*, 1839.

SIR: Your application for a patent for alleged improvements in trusses cannot be granted for the want of novelty. There is not anything substantially new in the items which you claim. You can elect to withdraw your application and receive back twenty dollars or appeal from this decision under the provisions of the Acts of March 3d, 1839.

H. L. E.

M'r ENOCH THOMAS,
New Athens, Harrison Co., Ohio.

Answer, April 1, 1839.

NEW ATHENS, *March* 26.

DEAR SIR: I received your note of the fate of my application for patent on the Truss. The failure was caused by the want of novelty. In the items which I claimed I will just say, sir, that I would have claimed the apparatus entire as my own invention had I not been in-

formed at the time I exhibited my truss to some physicians that a cer tain D'r Robert Thompson had applied for a patent for an apparatus for the same purpose and had obtained it. The account I had of it was that he had a front pad and a sacrum pad, with a belt which passed around the pelvis, and from that I claimed what was specified in my ap plication. What I want to know is this, whether there could be any alteration made in the specification or items claimed in it and obtain the patent. If there cannot, I would be glad to be informed of the course that must be taken to appeal under the provision of the Act of March 3, of which you spoke in your letter to me, and I would like to
1349 know the expense attending that appeal, whether any. I would like to know farther whether there will be a probability of obtaining a patent in case I should appeal. Under the circumstances I am extremely anxious to obtain Letters Patent, and if you will give the above asked information you will oblige

Your sincere friend,

ENOCH THOMAS.

H. S. ELLSWORTH,
Commissioner of Patents, Washington City.

Enoch Thomas, town of New Athens, county of Harrison, State of Ohio.

TRUSS.

Received 5th Dec. 1838—Petition—Affidavit—Specification—2 drawing—Model—Treasurer's Certificate $30—Examined—Issue—Patented 183—Recorded Vol. page . Application to withdraw Jan., 1879—How, Alexander—p'd.

Rejected March 16, '39—Drawings and specification returned to M. Thomas on the 16th July, 1839—by W'm Hand, Ch'f Cl'k.

Certified copy, No. 2.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy of entrys made on the Application Book of this office, relating to the applications of Enoch Thomas for patent for a Truss, and shows the date on which these applications were filed.

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this second day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

1350 DECEMBER 4, 1838.

Truss improvement in.

ENOCH THOMAS. *S.*

DECEMBER 6, 1839.

Truss, improvement in.

ENOCH THOMAS. —1—

S indicates rejected.

1— indicates specification and drawing returned to Inventor or Attorney.

Certified copy, No. 3.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy of an entry made in the "Machinists' Book" of this office December 20th, 1838, relative to a model for a truss received on that day.

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this third day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

Model received without name for a truss.

DECEMBER 20, 1838.

1351 *Certified copy, No. 4.*

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy of the entry made in the "Machinists' Book" of this office; in the matter of the application of Enoch Thomas, showing the date on which the model was received.

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this second day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

Enoch Thomas, Truss.

DECEMBER 5, 1839.

Certified copy, No. 5.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office, of the file, contents and drawing in the matter of the Letters Patent granted Enoch Thomas, dated March 12, 1840. Hernial and Uterine Supporter.

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this third day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

1352 *Petition.*

NEW ATHENS, *Jan.* 25, *A. D.* 1840.

To the Hon. Henry L. Ellsworth, Commissioner of Patents, Washington City, D. C.

The subscriber, having made a new and useful improvement on the truss, and being desirous to obtain an exclusive property therein, respectfully solicits Letters Patent thereon; he having paid $30 into the Treasury of the United States, and complied with other regulations of the said acts of Congress in relation to the application for, and granting patents thereon, provided the same improvement has not been previously patented, a description of which improvement is given below in the usual form.

ENOCH THOMAS.

To all to whom these presents may come:

Be it known that I Enoch Thomas of the town of New Athens in the county of Harrison and State of Ohio have made a new and useful improvement called Thomas' Hernial and Uterine and Elastic and Spring Supporter and that the following is a full and exact description thereof. The Elastic and Spring Supporter may be said to consist of four parts.

1st. The belt.

2d. The pads.

3d. The inferior part.

4. The Femeral pads and hip straps. First part B. The Elastic Belt composed of two pieces of Elastic Suspender webbing from eighteen to twenty inches long. The one end of each piece passes through two metal loops *g g* on the Sacrum pad S to the slide A. One on each side to which these ends are made fast. The other end of each piece, after passing under the several leather loops on the middle and front pads buckles at *g* by the leather straps H H which are stiched to the main pad B at D. The buckles R R on the other end of the belt are fastened in the same way. Second part. The pads, they are five including the Hernial pad.

1st. The front pad P. The Hernial pad.

1353 2d. The pubic pad Y.

3d. The Illium pads I I one on each side.

4. The Sacrum pad S. The front pad P.

The Hernial pad consists of a pad P two Spiral Springs *c c* and two small Inguinal balls B B resting on the top of the springs *c c*. There are eight small leather loops fastened on the inside of the pad P, Fig. 4, 4 on each end marked on the drawing by a pen and represented by the figure 4. The end of the spring which rests on the pad passes under these leather loops by a simple turn of the spring in the hand, so that it may be put in or taken out at pleasure.

On the under surface of the Inguinal balls B B are eight other small loops marked also by the figure 8, 4 on each ball. The balls are put on the springs by turning the end into one of the loops to the 2d and so on till all are on. These small balls may be taken off as well as in the other case. On the outside of the pad P and at each end of the pad is a leather loop I I under which the belt passes in its course forward. These are stiched to the main pad P on the front part of the pad also are two buckles V V suspended by the leather strips O O which are stiched to the upper part of the pad P.

2d. The pubic pad Y is constructed on the outside with leather loops,

buckles and leather slips the same as the Hernial pad P and marked with the same letters.

3d. The Illium pads I I one on each side.

There are also two leather loops I I on the outside of these pads, one at each end under which the belt passes, also a small buckle marked figure 4 in the centre of each pad suspended by the leather slips 5.

4th. The Sacrum pad S has in its centre outside two metal loops *g g* which are made fast there by other leather loops C C. The belt passes through these loops as above stated. There are also on the outside of this pad two buckles E E suspended by the leather slips F F which are stiched to the pad S at 3. 3d part the Inferiour portion consisting of several parts.

1st. T T—two straps of leather half an inch wide which pass from the perineal pad Q to the sacrum pad S and buckles into the buckles E E on the same pad. N N are two straps round 4½ or 5 inches long, cut an inch wide, edges sewed together stuffed with wool and covered with black morocco. H H, two leather straps flat which pass
1354 from these last forward to the buckles V V on the front pad into which they are made secure. Next the Perineal pad Q which consists of a pad Q a spiral spring, 1 1, and the perineal balls 12. The spring is turned into four small loops 7 on the upper surface of the pad Q. The perineal ball 12 is put on the top of the spring in the same way, viz: by small leather loops on the under surface of the ball. The pad may be taken apart easily. The loops in this pad and ball are not represented in the drawing. The pad remains stationary between the leather straps T T and the round straps N N, they being secured to the under part of the pad Q. 4th part consists of two pads called femeral pads 99 one on each side. They pass around the thigh at its upper end, and are made fast by the buckles 10, 10, and leather straps 13, 13. There are two buckles on each of the pads, one on the inside of the thigh, the other on the outside or nearly so, marked 14, 14. These buckles stand nearly perpendicularly to the buckles on the front and illium pads. There are also four leather straps half an inch wide, two called hip straps and two pubic straps, represented by the number 22, two on each side. The hip straps run from the buckles 14 on the inside of the thigh to the buckle *v* on the front pad one on each side. The hip straps run from the buckle 14 on the outside of the thigh to the buckle 4 on the illium pad one on each side. This completes the description of *of* the Supporter.

Directions for applying and an explanation of the principal involved in the application of the Supporter. This new and useful improvement is especially designed and perfectly adapted to cases of Inguinal Hernia, either in the male or female, and is so constructed as to prevent, during its application, any protrusion of the intestines through the Inguinal ring. It is also perfectly adapted to cases of Prolapsus Uteri in the female.

The Supporter is so constructed, that it may readily be made larger or smaller throughout every part of it, so as to accommodate any case. This is done by moving the slides A A on the back part of the belt, as you may want to make larger or smaller. Its application in a case of Inguinal Hernia is made in the following manner. 1st, The Sacrum pad is fixed in the hollow of the Sacrum which it is to support. The ends of the belt are brought forward around the hips or Illium two inches below the Superiour point of the Illium across which the Illium pads rest. The ends pass under the leather loops II, on the front pad
1355 P or Y, as the case may be, and buckles at G. The front pad is now to be so adjusted as that the Inguinal balls BB on the ends

of the springs CC, shall rest against the Inguinal openings. Thus fixed, the belt is buckled tight by which the springs coil on themselves, and consequently permit the balls to rest on the face of the pad, by which there is power given to the spring; and, though the pad should be considerably moved, the balls still press hard against the Inguinal openings by the power of the springs. There may be also almost any degree of motion in the Pelvis, and still the balls are secure because there is a rotary motion in the centre of the spring.

2d. The Femeral pads are passed around the uper part of the thigh, and buckle on the inside of the thigh so that the small buckles on the inside marked 14, may be perpendicular to the buckle V on the front pad, one on each side. The buckle 14 on the outside of the thigh, is immediately below the buckle Md 4 on the centre of the Illium pad, one on each side. The pubic straps then pass from the buckles 14 on the inside of the thigh to the buckles V on the front pad. The hips straps pass from the buckles 14 on the outside of the thigh to the buckle 4 on the centre of the Illium pads. The four straps buckled all is secure. Its application in Prolapsus Uteri is the same,—only that if it is Prolapsus simply the Hernial pad will be laid aside and the pad Y used in its place. If both diseases exist in the female at the same time the pad P will be used. The inferior part which is not used in a case of hernia (unless both exist at the same time) will be used in Prolapsus Uteri in the following manner. The leather straps T T, are secured in the buckles E E, on the Sacrum pad S. The other ends will be brought forward between the legs and secured in the buckles V V, on the front pad Y, by the leather straps H H. In its way forward the Perineal pad Q is made to apply to the Perinæum which it supports by means of the spring which is fixed in it. The spring is contracted in the application, and hence the expansive power of the spring is increased. The Perinæum is raised and the womb lodged in its natural place. This spring like the others, possesses a complete rotary motion in its centre. Hence the principle involved is that of support made by springs and balls which springs admit of motion every way without removing the point of support.

1356 The materials for and the manner of making the pads of the supporter.

The materials are neat shirting leather cotton wadding morocco, drab hat binding worsted girthing for the belt in Hernia and Elastic Suspender webbing in cases of Prolapsus Uteri metal buckles and loops and Steel Spring wire. The pads are made out of neat shirting leather with the corners cut off and the edges pared down, then several folds of cotton wadding of a less size than the pad. Over all is a piece of morocco lining—the edges of the lining and leather are whipped together with a needle and silk twist, then bound round by drab hat binding. All the pads are made in the same way except the Hernial pad which is made with two pieces of Shirting and a brass plate in the middle. The edges are made as the others. The Spiral Springs are made on two turned balls of the shape of half an egg, with the small ends together on the ball are grooves cut in a spiral form, these balls are fixed on an iron spindle with a crank to it, by which the wire is rolled on the balls in the groves. Then one of the balls is taken off and the spring removed. All the springs are made in the same way. The Perineal and Inguinal balls are made of several small pieces of leather paired down, then covered with cotton lined with morocco, and made as the others. The round straps, N N, are stuffed with wool and covered with morocco, and made as above stated. The Inferior part of the Supporter is not used in a simple case of hernia.

That part of the specification which refers to the pubic pad Y, will be understood by referring to Fig. 2 in the drawing.

What I claim in the elastic and spring supporter as my own invention, is the simple combination of the thigh straps for retaining the belt in Situ with the belt constructed and operating as above described.

ENOCH THOMAS.

WILLIAM ESTESS,
W. H. MCNARY,
Witnesses.

STATE OF OHIO,
Harrison County, ss:

On the 27th day of January, A. D. 1840, Before the subscriber a justice of the piece in and for the County aforesaid personally appeared
1357 the within named Enoch Thomas, and made solomn oath according to law, that he does verily believe that he is the original or first discoverer of the improvement he claims in his specification of an improved Truss. For which he solicits a Patent, and that he does not know or believe that the same improvement was before known or used and also that he is a Citizen of the United States.

Given under my hand and seal the day and year above written,

[SEAL.] WILLIAM BOGGS,
Justice of the peace.

P. O., *December* 17, 1839.

SIR:—The specification and drawings of your alleged Improvements in Trusses are herewith returned to you for amendment, the same having been found on examination defective, which defects are noted on the specification. The office doubts whether it will be able to pass your application, as a truss very similar in its construction was patented in June, 1837, by Robert Thompson, a model of which is now in the office, consisting of a belt surrounding the body, having a back or Sacrum pad with a perineal apparatus and abdominal pad attached to it, when used for prolapsus Uteri, and having inguinal pads also to adapt it to the relief of hernia.

Your claim as now stated cannot be allowed, as the mode of extending the belt by means of the slides is not new, the same means having been used for the same purpose in suspenders.

The claim to the construction of the pads with spiral springs, is also objectionable, as pads have already been constructed in this manner, and the only possible claim that the office will be able to admit, is the combination of the thigh straps for retaining the belt in sita with the belt constructed and operating as described.

H. L. E.

D'r ENOCH THOMAS,
New Athens, Harrison Co., Ohio.

(Care of Henry Swearinger, House of Representatives.)

Ans. Jan. 16, 1840.

NEW ATHENS, *Jan.* 7, 1840.

DEAR SIR:—I regret that the idea of my claiming originality in the slide and spring spoken of in my other claim was conceived by the office. It was not intended. I new slides had been used on sus-
1358 penders so also did I know that Spiral Springs had been used in

a variety of cases. I have made out my claim again, and I think will be understood. All I claim is an improvement, as you will see in the language of my claim. The thigh part is indeed new, and you must judge of the improvements claimed. I have no doubt but that you will act coscienscously in the case. If you cannot pass my application upon the ground of improvement, you cannot pass it at all. I will just Say, though I do not know that It will do any good, or be even in place, that several eminant Physicians have examined both Thompson's and mine, and have given mine the decided preference, and are ready to certify this fact, if called on. In a word, they consider it a great improvement. They have used both, and are therefore prepaired to judge. I have nothing more to say, only that if there are any serious mistakes in my specification, petition or claim you will please inform me. I have been very careful in making them out. I had no form for a petition. I therefore expressed my desire to secure an exclusive property in the supporter.

I am, yours respectfully,

ENOCH THOMAS.

As you will see two claims laid, in case the claim to improvement in the particulars specified in the first claim should fail, I have claimed secondly an improvement and left you to judge of that improvem't as I have specified none in the last claim.

That is I have specified no improvement in particular but general and when I say I leave you to judge of the improvement I mean that you are to say whether there is an improvement or not if there is whether there is sufficient to justify passing my applicacion I will here stait again if there is any wrong you will please give me an opportunity of correction.

E. T.

P. O. *January* 16, 1840.

SIR:—Yours of the 7 inst. has been received and in reply, I have to state that the requirements of the office communicated to you under date of Dec. 17th 1839 not having been complied with, you are again
1359 referred to that letter, in which the only possible form of claim is suggested to you.

The specification is returned to you.

H. L. E.

M'r ENOCH THOMAS,
New Athens, Harrison Co., Ohio.

(Care of Hon. H. Swearington, House of Reps.)

P. O. *Feb.* 7, 1840.

SIR:—The specification of your alleged improvement in Trusses is again returned to you for amendment as the office cannot admit your claim to the construction and combination of the thigh straps with the belt. The claim to the simple combination of the thigh strap and belt, as set forth in its letter of the 17 of Dec'r ulto. it is willing to admit, but as there is no novelty in the construction of the thigh straps the present claim cannot be admitted.

H. L. E.

ENOCH THOMAS,
New Athens, Harrison Co., Ohio.

(Care of Hon. Henry Swearinger, House of Reps.)

NEW ATHENS, *Feb.* 28, 1840.

SIR:—Yours of the seventh was received on the 26th, in which I found my Specification for amendment. I thought I had not only made use of the form in your letter of 17th Dec. but also the words of that form—but upon examination of the form and words, I find the word construction in my last claim which was not in the form. However the claim now is that suggested in your letter of Dec. 17th, word for word with this exception; in the place of construction I have inserted the word (Simple) as marked in your last. Your last letter dated 7th was mailed on the 20th. This must be the neglect of the Hon. H. Sweringer, I hope the office will hereafter mail its communications Direct to me,
1360 As I do not wish to have them remain the in th city thirteen or fourteen days after they leave the office.

Respectfully Yours,

ENOCH THOMAS.

Hon. H. ELLSWORTH,
Commissioner of Patents, Washington City, D. C.

IMPROVEMENT IN SURGEONS' TRUSSES.

Enoch Thomas, town of Athens, county of Harrison, State of Ohio. Hernial and Uterine Supporter.

Rec. Dec. 3, 1839—Petition—Affidavit—Specifications—2 Drawings and—Model, Rec. Dec. 6, 1839.
Treasurer's certificate, 20 Patent office, $10; December 14th, check.
Examined T. W. Donovall, March 4, 1840.
D. D. complete.
Issue, J. W. Hana—March 4th, 1840.
Patented, March 12, 1840; Recorded Vol. 10, page 235, on parchment.

HENRY SWEARINGER, *M. C.*

Sp and Dr. returned Dec. 17th, '39. Answered letter within—Jan. 16th, 1840, to care of H. Swearington, H. Rep. Spec. and Dr. returned as not having complied with instructions. Sp. returned Feb. 7th, 1840.

Certified copy, No. 6.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file and contents, in the matter of the Letters Patent granted William Smith, dated April 5th, 1853, No. 9653, for "Improvement in Looms."
1361 In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

NEW YORK, 16*th October*, 1852.

SIR:—Herewith is forwarded the Petition, Oath, specification, duplicate Drawings, Cert. of Deposit for $30, and Model, constituting the

complete application of William Smith for a patent on Improvements in Weaving.

The advice of and action on this case, as also the Patent when issued, be pleased to address to my care.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. THOMAS EWBANK.

NEW YORK, 16*th October* 1852.

SIR:—Be pleased to correspond with my Agent Lemuel W. Serrell, New York City on my application for a Patent on improvements in weaving. And also I request and authorize you to send the Patent when issued to his care.

Respectfully yours,

WM. SMITH.

Hon. THOMAS EWBANK.

To the honorable Thomas Ewbank, Commissioner of Patents of the United States:

The Petition of William Smith, of the City County and State of New York, Weaver, respectfully represents.

That your petitioner has invented certain new and useful improvements in looms for weaving fabrics of three thicknesses and in the goods produced thereby, which improvements he verily believes have not been known or used prior to the invention thereof by your petitioner.

He therefore prays that Letters Patent of the United States may 1362 be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, agreeably to the Acts of Congress providing for such cases, he having paid thirty dollars into the treasury of the United States, and otherwise complied with the requirements of the said Acts.

Respectfully yours.

WM. SMITH.

NEW YORK CITY, 16*th October* 1852.

UNITED STATES OF AMERICA,
City and County of New York, in the
Southern District of New York, ss:

On this day, the sixteenth of October one thousand eight hundred and fifty-two; before me, Joseph Bridgham, a United States Commissioner for the Southern District of New York, 2d Circuit, duly appointed etc., personally appeared the within named William Smith, whose name is subscribed hereto, and made solemn oath; that he verily believes himself to be the original and first inventor of the within described improvements in looms and in the fabrics made thereby, and that he does not know or believe the same was ever known or used before his invention thereof, and that he is a native of Great Britain having resided more than one year next preceding the date hereof in the United States and having duly made oath of his intention to become a citizen thereof.

WM. SMITH.

Sworn at the City Hall of the said city this sixteenth day of October, 1852.

Before me,

JOSEPH BRIDGHAM,
U. S. Commissioner.

To all to whom these presents may come:

Be it known that I William Smith, of the city, county and State of New York, weaver; have invented made and applied to use, certain new and useful improvements in looms for weaving, and in the fabrics produced thereby. And I hereby declare that the following is a full, clear and exact description of the construction and operation of the same, reference being had to the annexed drawing making part of this specification wherein Figure 1 is a sectional elevation of the loom; Figure 2,
1363 is a front view of the lay; and Figure 3, is a perspective view of the fabric that is formed by this loom. The like marks designate the same parts. The object of my invention is to furnish means for weaving fabrics formed by a centre warp of india rubber for corrugated elastic goods, or any similar warp which is enclosed by a fabric formed on each side of it, by filling from two shuttle, one passing above and the other below the centre warp which is stationary, the sheds being formed by upper and lower warps worked in any usual manner,—*a* is the frame of the loom of any convenient form carrying the driving shaft *b*, that is moved by any competent power. *c* are the connecting rods from cranks on the shaft *b* to the lay *d* that is supported by and vibrates on a rocks shaft, 1. 2 is a warp roller kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off when at the required tension as now practised. This warp 3 is to be of india rubber strips if the fabric is to be corrugated and elastic, or this warp may be cotton or any fibrous substance where a thick quality of goods is required. This warp passes through the stationary heddle 4, and through the reeds *e*, in the lay over the breast-beam *f*, the fabric as it is formed being wound by any usual means on to the roller *g*. 5 is the warp-roller, supplying the warp 6, for the two sheds; the warp passes through two heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling as hereafter shewn. The heddles 7 and 8, are worked by any competent means the one being fitted to ascend as the other descends; in the drawing these are shewn as connected by straps 9 over a pulley 10, the straps 11 and 12 being connected from the under side to treadles to be worked by cams from an auxiliary shaft or by the feet, if power is not used, in the usual manner.

The lay itself is front of the reeds *e* is formed to receive two shuttles by a centre piece 13, with a rib on each edge, and by upper pieces 14 and lower pieces 15, all attached to the body of the lay so as to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle, and the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged. The shuttles are propelled by means of a frame *k* above with projections depending from the same to give the blow and propulsion to the upper shuttle, and the
1364 lower shuttle is moved by a similar frame *l*, and projections. Fig. 3 shews a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys so that one travels one way while the other travels in the opposite direction, and by any ordinary picking motion if in a power loom, or the usual strap for a hand loom, being applied to move either frame, the shuttles are thrown in opposite directions through the sheds above and below the warp 3.

This loom is especially intended for use in weaving corrugated elastic fabric, several pieces being woven at the same time.

I wish it to be distinctly understood that I do not limit myself to the means for moving the shuttles as instead of the frames *k* and *l*, racks

may be used, that in their motion rotate pinion wheels fixed on the lay that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the sheds even if the motion be not sudden enough to throw the shuttle.

Or both shuttles may be thrown through the sheds in the same direction at the same time.

The two shuttles carry bobbins with filling as usual, and the loom in working forms a fabric as shown in large size in Fig. 3, the warps 6, passing up and down through the stationary centre warp 3, and the upper shuttle *i* and filling form a fabric on one side of the warp 3, while the lower shuttle *h* and its filling, forms a fabric on the under side. Thus the warp 3, is enclosed; and in weaving india rubber elastic goods my loom and mode of weaving is especially useful, and has advantages over looms for the following reasons, which reasons apply to a certain extent to the weaving of other fabrics than indiarubber;

1st. Where a warp of india rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it. In this mode of weaving, the fabric has ribs produced on its surface, caused by the india rubber in raising or lowering, imbedding itself in the filling or woof, leaving the india rubber and its covering raised on each side, but by my arrangement the india rubber being stationary but a slight rib is formed on the surface of the goods.

2d. Where two shuttles have been used with different or the
1365 same kinds of filling, one has passed through the shed, and then the india rubber has been raised up to let the second shuttle pass beneath it. This produces the same imperfections in the goods that are manufactured.

3rd. With both the foregoing old methods for weaving elastic goods, the india rubber being moved is subject to constant wear by the friction, often breaking the india rubber warp, whereas in my loom the rubber being stationary is not so much subject to wear.

4th. By using two shuttles as herein shown a saving of time is affected, because under the old methods first one side was formed and then the other of the fabric, my method requiring but about half the time, thereby producing a corresponding saving in cost.

5th. Where but one shuttle is used in weaving elastic fabrics, an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

I do not claim two shuttles, as two or more have been used in various kinds of weaving, but what I desire to secure by letters patent is,

I claim [the stationary centre warp 3 in connection with the two shuttles, carrying filling, moved at the same time, either in opposite or in the same direction above and below the stationary warp 3, to produce the fabric as herein declared and shown] (foregoing words in brackets erased) the process of forming a fabric by the combination of stationary and movable warps with two weft threads, passed simultaneously through the two sheds, and formed above and below said sationary warps. The weft threads being held in place on the surface of the stationary warps by the movable warps as specified.

In testimony whereof I have hereunto set my signature this sixteenth day of October, one thousand eight hundred and fifty-two.

WM. SMITH.

Witnesses:
LEMUEL W. SERRELL,
CHARLES TENCELLENT.

1366 P. O. *December* 16, 1852.

SIR:—Your claim to the stationary warp in connection with two sets of filling, does not appear upon examinationto be new or patentable. You are referred to the enclosed fabric, which must have been woven with two shuttles, and with a central stationary warp. This fabric has been in this city more than year. Upon inspection of this fabric, you will perceive that two sheds must have been formed in weaving, one above the other below the heavy warp.

The cotton filling passing through the lower, and the silk through the upper in forming a new shed the fine warps which were above are carried below, by which means the filling covers the heavy warp—one half with silk and the other half with cotton. If the large warp were movable the same side of the fabric would be alternately covered with the cotton and silk filling.

S. H. H.

WM. SMITH, L. W. SERRELL,
New York, N. Y.

20*th* DECEMBER, 1852.

SIR:—In reply to the official letter of 16 inst. on the application of Wm. Smith for a patent on improvement in weaving, I would state that the fabric enclosed therein has had the careful consideration of Mr. Smith and myself.

He states that goods made like the sample enclosed in the official letter were woven by him more than thirty years ago, and the manner of weaving them is that the cotton filling is first made to pass beneath the centre warp, the centre warp is then depressed and the heads of the lay carrying the silk shuttle is raised sufficient to come in the centre of the shed, and then the shuttle is propelled through; this fact is evinced by unravelling the sample sent as the cotton and silk filling will be found wound in opposite directions around the edge warp, which could not be accomplished by both shuttles moving above and below the stationary warp; and this is a great detriment to the fabric which Mr. Smith's loom obviates, viz. there is twice the substance on the edges that there is in the centre, thereby the elastic warp cannot contract to such an extent, and also in silk and cotton filling, the edges being composed of both fibres get dirty much quicker than the silk surface. On inspection of the sample sent by the office it will be seen also that the centre warp must have moved from the corrugated surface presented.

1367 Enclosed is a piece of fabric woven in Mr. Smith's loom which the Department can unravel to see the way in which the parts are laid together. It will be here seen that there are distinct fabrics above and below the centre warp which are not bound round one edge warp, as in the sample sent by the office, there being two selvages above and below the centre warp. It will be found in the sample sent herein that there is an elastic warp covered with silk on the very edge, which is merely introduced to prevent the lighter colored back from s howing This warp is raised up and down, but has no bearing on the rea l inven

tion in the case, and merely moves from the centre warp to the shed on which the silk side is woven.

It will be seen that Mr. Smith disclaims the use of two shuttles, and in the second point of distinction between his invention and others, the very process is described of weaving similar to the sample sent by the office,—and in order to wind the filling in opposite directions around the edge warps one shuttle must pass through before the other, the warp being raised or depressed, which on mere inspection will show that the centre warp must have been moved, for how could the filling be made to pass around in opposite directions, if this warp was stationary, for the shuttles would have to pass vertically up and down between the edge warp and its next warp, if all the warps did not raise and fall?

In conclusion Mr. Smith instructs me to say that he has shown his loom to parties who have been weavers in this branch of manufacture all their lives, both in this country and in Europe, and none have ever seen or heard of such a plan for weaving as Mr. Smith's, and he would respectfully request the Department if such is in existence, to refer to some loom, or account thereof, in which the stationary warp is used with two shuttles, as he does not know of any such loom.

It is hoped that these explanations will be satisfactory to the Department, and that the Patent may issue at the earliest date practicable.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. SILAS H. HODGES.

1368 MARCH 23, 1853.

SIR,—Your specification for improvement in the mode of manufacturing corded fabrics is herewith returned. You are requested to modify your claim as suggested, and it probably will be allowed.

S. H. H.

WM. SMITH.
L. W. SERRELL.
New York, N. Y.

MARCH 23, 1853.

SIR,—Herewith I return the specification of Wm. Smith on improvements in weaving, with the claim amended as desired by the department.

In view of the previous delay on this case, it will be esteemed a favor for the patent to be issued at the earliest date practicable and consistent with the rules of the office.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. SILAS H. HODGES.

U. S. PATENT OFFICE,
Washington, D. C., June 15, 1868.

WILLIAM SMITH, Esq.,
Washington, D. C.

SIR,—Please find below the decision of the Examiner in charge, in the matter of your application for a re-issue of Patent No. 9653, dated the 5th day of April, 1853, for improvements in weaving, and issued to W. Smith, and extended and reissued.

Filed September 10th, 1867, Div. B.

Very respectfully,

A. M. STOUT,
Acting Commissioner.

EXAMINER'S ROOM No. 7.

The application above referred to has been again considered, the appeal to the Board of Examiners-in-chief having been withdrawn
1369 for the purpose of introducing an amendment, in view of a description of a fabric shown in "Description des Arts et Metiers" Eloffes de soie, vol. XI, pl. 70." The object of the amendment is to restrict the claim to a fabric having an elastic cord warp, the specification being sufficiently broad to include a cord of any material. The amendment does not so limit the invention that the references heretofore cited are not now pertinent, but they, on the contrary, fully anticipate the claim as amended, and it is again necessarily refused.

(Signed.) G. W. GREGORY,
Examiner.

No. 9653.

William Smith of New York, County and State of New York. Impt. in Looms.

Rec'd October 19, 1852—Petition—Affidavit—Specification—2 Drawings—Model, one cert. dep. $30.—Cash.
2 Examined F. S. Smith March 24, '55.
Issue U. W., March 25, '53.
3 Patented, Apl. 5, 1853.
Recorded vol. 51, page 275.

LEMUEL W. SERRELL.
N York.

Rejected Dec. 16, 1852.
Spec. act, March 22, '53.

Certified Copy, No 7.

The United States Patent Office. To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file and contents in the matter of the Extension of the Letters Patent granted Wm. Smith, April 5th, 1853, extended 7 years, March 28th, 1867, "Imp't in Weaving Corded Fabrics."
1370 In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

Petition.—Received and filed Nov. 19, 1866.

To the Hon. Commissioner of Patents of the United States:

The petition of William Smith of the city and State of New York respectfully represents:

That he did obtain Letters Patent of the United States for an Improvement in Weaving Corded Fabrics, which Letters Patent bear date the fifth day of April A. D. 1853.

That from circumstances beyond his control and without neglect or fault on his part, he has failed to realize an adequate remuneration for

the time, ingenuity and expense bestowed upon the said invention and in the introduction thereof into public use.

He therefore prays that his said Letters Patent may be extended for the term of seven years from the expiration thereof, agreeably to the Act of Congress in that case made and provided, he having paid fifty dollars into the Treasury of the United States and otherwise complied with the requirements of said act.

WILLIAM SMITH.

NEW YORK, N. Y., *November* 17, 1866.

Power of attorney.

NEW YORK, *Nov.* 17, 1866.

SIR,—I hereby appoint Lemuel W. Serrell, New York, my agent and attorney, in relation to my application for an Extension of Letters Patent, granted me April 5, 1853, for Improvement in Weaving Corded Fabrics, and authorize him or his substitute to do whatever may be ne-
1371 cessary in the premises, as fully and entirely as I could do if personally present, and to receive the extended patent when granted.

Respectfully yours,

WILLIAM SMITH.

Hon. T. C. THEAKER,
Commissioner of Patents.

NEW YORK, *Nov.* 17, 1866.

SIR,—Enclosed herewith I forward the Petition of Wm. Smith for an Extension of Letters Patent granted him April 5, 1853, for improvement in weaving corded fabrics.

Certificate for $50, and power of attorney empowering me to act in the matter, also inclosed.

The old patent will be furnished in due season.

Respectfully yours,

LEMUEL W. SERRELL.
C. H. SMITH.

Hon. T. C. THEAKER.

Order for publication.

DEPARTMENT OF THE INTERIOR, U. S. PATENT OFFICE,
Washington, Nov. 19, 1866.

On the petition of William Smith of New York, N. Y., praying for the extension of a patent granted to him the fifth day of April, 1853, for an Improvement in Weaving Corded Fabrics, for seven years from the expiration of said patent, which takes place on the fifth day of April, 1867: It is Ordered, that the said petition be heard at the Patent Office on Monday the 18th day of March next, at twelve o'clock M., and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least twenty days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

1372 Depositions and other papers, relied upon as testimony, must be filed in the office twenty days before the day of hearing; the arguments, if any, within ten days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the Intelligencer, Washington, D. C., and in the Times, New York, N. Y., once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office, with a paper containing this notice.

NEW YORK, *Dec.* 15, '66.

SIR,—Herewith I transmit the Letters Patent of Wm. Smith, together with statement of account and affidavits, which are to accompany his application for Extension of said Letters Patent.

Yours, etc.

LEMUEL W. SERRELL,
Pr. WALKER.

Affidavit as to loss of patent.

CITY, COUNTY AND STATE OF NEW YORK. *ss.*

William Smith, being duly sworn, deposes and says, that he is the person to whom Letters Patent of the United States were granted under date of April 5th 1853, for an improvement in weaving corded fabrics.

That he is now applying for an extension of the said Letters Patent.

That the said original Letters Patent were furnished by him to parties connected with the Silk Manufacturing Company about the year 1856, to whom said deponent sold certain rights in the said invention.

That deponent has made several efforts to obtain the possession of the said original Letters Patent without success. That deponent does not now know where the said Letters Patent is. That the same is kept from him against his will, and may have been destroyed for aught deponent knows, and he is entirely unable to produce the same.

1373 He therefore requests that the accompanying certified copy of his said Letters may be received and used for the purposes of the said extension in the place of the original document.

WILLIAM SMITH.

Sworn before me this 15th of December 1866.

[L. S.] CHAS. H. SMITH,
Notary Public.

[5 c't stamp.]

Statement of account.

Patent of William Smith for Weaving Corded Fabrics, dated April 5, 1853.

		Dr.	Cr.
1851.	Loom $10. Rent $100. Wages $300	$410 00	
	Paid for rubber threads $50, mohair $90	140 00	
	Sold 600 yards webbing		$800 00
1852.	Paid for rent $100. Wages $325	425 00	
	Tram silk $200. Rubber threads $60. Mohair threads $87. Paper, boxes, etc., $20	367 00	
	Sold 1,000 yards webbing		1,500 00
1853	Making two machines	800 00	

	Shafting, pulleys, wheels, spools, &c	255 00	
	Machine for cutting rubber thread	150 00	
	Rents $300. Wages $331. Machine work $200	831 00	
	Tram silk $785. Rubber, Mohair, &c., &c. $523	1,308 00	
	Cost of patent, about	100 00	
	Altering a machine for garter webbing	500 00	
	Extra wages	600 00	
	Sold 2000 yds. silk webbing		3,000 00
	" 300 " Mohair "		375 00
	" 200 " Cotton "		100 00
1854.	Paid Rent $300. Coal &c. $30	330 00	
	Wages $1200	1,200 00	
	Discount borrowed money	150 00	
1374	Machine for cutting metallic rubber thread	500 00	
	Tram silk	780 00	
	Cotton & Dying $300. Mohair, $400	700 00	
	To altering machine for weaving suspenders, &c	1,200 00	
	Goods sold by an Agent		4,362 76
	Commission to him	218 76	
	Goods sold myself		1,819 00
	Sold garter machine to H. Davenport		1,000 00
1855	Paid rent	750 00	
to	Expenses of removal from 37th st. to Ann st	100 00	
April	Fitting up room &c	150 00	
1856.	Goods, materials &c. destroyed by rats about	400 00	
	Paid for silk	1,460 00	
	" " rubber thread	540 00	
	" " cotton, "	320 00	
	Wages and incidental expenses	1,805 00	
	Goods sold amounted to		6,384 00
	Cash received from sale of right and machinery to Silk Manufacturing Company		3,000 00
	$3,000 of stock was also issued to me which has proved valueless, Expenses have been incurred in litigation with Silk Manufacturing Company from 1857 to present time amounting to about	4,000	
		$20,489 76	$22,340 76
	In this account no charge is made for personal time, but the cash receipts & expenses show a balance of	$1,851 00	
		$22,340 76	

WILLIAM SMITH.

1375 CITY, COUNTY AND STATE OF NEW YORK. *ss.*

William Smith being duly sworn, deposes and says, that in the matter of his Improvement in Weaving Corded Fabrics he has not kept any regular accounts of his receipts and expenditures, that his transactions being for cash he had no occasion to keep such books. That the foregoing statement of account has been compiled from memory and from memoranda in possession of deponent and contains a full statement of the receipts and expenditures in connection with said invention as full as he is now able to produce the same. That said statement of account is true and correct to the best of his knowledge and belief.

WILLIAM SMITH.

Sworn before me this fifteenth day of December 1866.

[L. S.] CHAS. H. SMITH,
Notary Public.

General affidavit.

In the matter of extension, William Smith's patent of April 5, 1853, on weaving corded fabrics. Hearing before Hon. Commissioner of Patents, March 18, 1866.

CITY, COUNTY AND STATE OF NEW YORK. *ss.*

William Smith, of said city, being duly sworn, deposes and says that he is the inventor and patentee of the said improvements.

In the winter of 1848 and '49, when the cholera was in this country, I was unfortunate in business, and had to shut up and stop. In the spring of 1849 I was going down Fulton street and saw a pair of Congress gaiters in a show-case with Day's elastic cemented goring in them. I saw that I could weave something that would answer the same purpose, but I had no money to do so. There was a friend of mine that lent me a little hand-loom, and I raised seventy-five cents; with that I bought a spool of rubber thread (native) and a little mohair. That made 4 yards of 4½ elastic webbing. I sold it for 12 cents p'r yard, then bought more; but at that time it took me a week to sell what I could afterwards
1376 make in a day; but I was making money. I contracted for two machines on my principle for $400, paying in advance as the work progressed. The man greatly delayed in making them, and when one of them was ready, I took a room in 37th street, New York, put up a shafting, etc. When the last of the machines was delivered and put up I found it was so badly made and finished that it would not work properly, and after spending much time and money upon it I found I had to get the principal part remade, which delayed me more than twelve months, and the man that first made them had gone off to California.

During this time I had applied to the late W'm Serrell about getting out the patent, but he thought best to wait till I had all the parts made perfect, and when they were so he was ill with his last sickness, and I had to wait until after his death, when L. W. Serrell, his successor, came and took the drawings, etc., and then I was delayed in getting the model made, etc.

In 1852 the trade in these goods began to increase so much that my means were insufficient in any way to supply the demand I had, and in 1853 to 1856 the demand had much increased, but Horace H. Day, or those acting with him, kept frightening customers from using it by going and sending men around everywhere saying if they infringed his patent what he would not do—he would not say that if they used my goods he would prosecute them, but they understood it as such, and they wanted me to give them bonds to secure them against Day. I was too poor to do so, but the demand was such that I was enabled to procure new customers all the time, and so managed in some way to get along.

Day, or his associates, took other methods to stop the sale of my goods. Where I had sold them to sell again to the trade he would send some one to buy some, and them cut out into gores, and then have them returned, saying they would not hold the stitching and were worthless. Again, I have seen trunks of fine Congress boots that had been sent to Charleston, S. C., sent back with word that the elastic was good for nothing, they having a large hole made through each gore by some instrument, although the boots had never been used.

Again, I have seen in Boston Congress boots with elastic goring in them, made under my patent, that some one had brushed some kind of oil upon them that destroyed the rubber contained in them.

1377 In 1854 I sold a machine to Henry Davenport to make garter-

web'ing, or any other trimming to 1¼ inches wide, for $1,000, being about the cost of the machine and the experimenting in bringing it to perfection.

In 1854 and '55 the demand became so strong for the use of vulcanized rubber threads in the goring that I found I must use it or lose the trade. Now, in those days there were no vulcanized rubber threads to be bought at any price, so I sent to England to make enquiries if I could buy it there. After waiting several months I got about 20 lbs.—not more than I could use in a week. Therefore I saw I should be under the necessity of inventing my own machinery for cutting India-rubber thread.

I had long before this invented machinery for cutting thread from native rubber, also put up a large iron press for pressing the sheets of pure rubber flat.

I invented said machine by lapping the sheets of vulcanized rubber on a large cylinder overlapped with gutta percha, and cut it with a revolving circular knife at a great speed, moving slowly along by an endless screw, while the cylinder revolved very slowly the same way. All this took me much time and labor, and I could not have expended less, by the end of 1854, than $3,000, besides the labor.

There was but one firm that I knew of that could make me vulcanized sheet rubber, such as would be answerable for my use, and that was the Union Rubber Company, and I could not get it from them regular, but had often to wait a week for it. Again, I had to learn them how to roll it to be suitable for my purpose. I never could get from them any two lots of one thickness, so never could cut my threads of one degree of strength, which troubled me much. After about six months I had been going on in this way the Union Company sent all their machinery to New Brunswick to be repaired, while the company was building additions to their works, and I was waiting nearly six months for them before I could again receive sheet vulcanized rubber from them.

During this time, in spite of all the opposition of Day, the demand had largely increased, and firms began to order the goods to be made in England in large quantities.

During this waiting I had put up a machine for weaving suspenders and weaving the button-holes in them (under my patent).

1378 This machine cost me much time and expense, and when successful I could not find any workman that had sufficient skill to work it in a proper manner, and had to let the machine rest, as I had not the means to send to England for workmen. I found that the nature of the machinery was such, and the demand becoming so large, that $500,000 could be successfully invested, but I had no capital, nor had I any means or friends to aid in sustaining my patent right.

Thus I continued all the year of 1855, and up to this time I had spent on building machinery, getting out my patterns, etc., about $4,000, less $1,000 that I had got from Davenport, which brings me down to the spring of 1856, when the Silk Manufacturing Company was got up.

At this time, and for one year before, I had been much delayed for the want of proper and regular steam power, so much so that I had mortgaged my machinery for $600, and had got much behind with my rent, besides considerable other debits to machinists and of a more domestic nature. The landlord put the sheriff upon me, and the man to whom I had mortgaged the machinery was about to close the mortgage, and I was beset with difficulties in many ways, and to get out of these difficulties I got delays of execution by the sheriff from time to time, and formed a corporation called the Silk Manufacturing Company,

to whom I assigned my patent and machinery for $6,000; $3,000 in cash, and $3,000 in stock of the company, and after paying off the mortgage, the rent, my machinist's bills, etc., I had but 500 dollars left out of the three thousand, and the stock of said company afterwards proved to be worth nothing to me, and this was the last money I ever received on my patent account, and must have been several thousand dollars out of pocket for time, and necessary personal expenses, when the formation of the company was made.

This company was formed and consisted of four persons, viz: W'm Smith, James E. Rogers, Jno. Campbell, Benjamin F. Lee. The capital stock was $12,000, of one hundred and twenty shares of $100 each. The company was formed under the statutes of New York, each subscribing for thirty shares.

W'm Smith, president.
W'm Campbell, treasurer and secretary.
1379 Benj. F. Lee, trustee.
Jno. Campbell, "
W'm Smith, "

I went to Patterson, N. J., and built four new machines for making webbing, put up silk machinery for throwing silk to manufacture it for our own purposes, put up a very large power press, steam calendar, and everything necessary to manufacture. This took me about twelve months to complete, but I began to manufacture as I got things ready. The company was formed in the beginning of May, 1856, and stopped working in June, 1857.

About September, 1856, or, I think, in August of that year, I began to manufacture goods, and in October I found the company were making no effort to sell the goods. I remonstrated with them about it, and they promised to make effort to sell them. As I was living in Patterson, and my time fully engaged there, I could only come to the city every three or four weeks, and then could only stay for a few hours at a time; but every time I came down I found no effort had been made to sell the goods, and they were accumulating on our hands, and I had machinery in such a state of preparation that I could treble the amount of production. I again sharply remonstrated with them, and insisted that the goods should be sold. They again faithfully promised that they would get paper boxes made to put the goods in, as it would be much better than being wrapped in paper, and should have the boxes as soon as election was over.

I doubted their word, and began to have some suspicion that they must have some design, and by reasoning from cause and effect there must be a motive for their actions, and from this time began to reason by analogy to find out their motives.

I had a few hours to spare at this time when down in the city, and I went and made the following arrangement with the principal wholesale shoe houses of this city:

That they should use the goods in their own manufactories, and they should act as agents for the sale of the goods to country dealers, and for other cities, and they should have a discount of ten per cent. from the invoice prices and pay nett cash on the first day of every month. I went back and informed them of the arrangement I had made, in which they seemed very well pleased. I made up my mind at this time
1380 that if they refused to sell the goods to the different parties I had named I should be sure they did not intend to sell the goods, but had other motives for keeping them out of market.

I went back to Patterson and did not come down to the city for sev-

eral weeks, and it was about the middle of December when I again came to the city, and I found they had not sent any goods to any of the parties. I called a stockholders' meeting, and John Campbell and Benj. F. Lee told me that I might make myself contented, as he and Lee should always vote together and do as they pleased; that they would attend to the financial part, and I must attend to my department and make the goods perfect, and have the machinery made and constructed in the most perfect manner possible; that expense might be d—d, they could procure a hundred thousand dollars; they did not want the goods to go in the market just yet; they were in no hurry; I need not alarm myself about funds; they could look to that, etc., etc.

I have been at law with these parties nearly ten years. The suit has cost me, besides my time, which is fully employed by it, about four thousand dollars.

After careful consideration, I believe that if the time which I have spent about the invention and lawsuit, and the items of expenditure reckoned, of which I cannot now give any detailed account, I am now more than $10,000 out of pocket.

The demand for elastic goods became most rapid, and drove Day's cemented webbing completely out of the market, so far as gores for Congress boots is concerned, in spite of all the monopoly, threats and influence of a great money corporation, and continues so to this day, and it is now most extensively used for suspenders, velvets, tailor's coat and vest bindings, garter webbing, carpets, binding, etc. I know of machinery worth more than half a million of dollars now in this country for manufacturing fabrics secured by my patent.

That deponent is aware that previous to the date of the said letters patent elastic material had been produced by rubber cemented upon a woven fabric.

That he is also aware that corded fabrics had been made by the warp rising and falling so that one shuttle could be employed to carry the filling thread both above and below the said heavy or elastic warp.

1381 That deponent believes that prior to the said invention corded fabrics had never been woven by a standing warp and with filling threads passed above and below said standing warps through sheds formed by the moving warps that produced a fabric on each side of the standing warp.

That the deponent believes the said invention to have been new when originally invented and patented, and that he has not discovered anything since the issue of the said letters patent whereby its validity could be reasonably questioned.

That deponent knows that the invention in question is very useful, valuable, and important. That the goods woven upon the aforesaid plan, in which the fabric is formed on each side of a standing warp, have taken the place of all other elastic fabrics in which a warp of India rubber is employed.

That deponent has had a general knowledge of the manufacture and importation of elastic webbing, suspenders and other articles made upon the plan secured by the aforesaid letters patent.

That deponent believes that ten millions of yards of such elastic webbing, and about four millions of yards of elastic for suspenders, garters, etc., have been used in the United States during the past fourteen years.

That upon the elastic webbing for shoes deponent believes there has been a profit of about fifty cents per yard when made of silk, and about fifteen cents per yard when made of cotton.

That upon elastic webbing for suspenders deponent believes there has been a profit of about five cents per yard on the average.

That deponent estimates that the value of the said invention to the public has been at least one million of dollars in the saving effected in the manufacture of elastic and corded fabrics on the plan patented as aforesaid, over and above the most approved plans pursued before this said invention for the manufacture of this class of goods. And furthermore deponent verily believes that a profit has been made on the actual manufacture of said class of goods upon the plan patented as aforesaid of over four and a half millions of dollars, reckoning the difference between actual cost of manufacture and the selling price to consumers.

1382 That deponent has exercised diligence and availed of every lawful and proper means to endeavor to secure a remuneration commensurate with the value and importance of the invention.

That during the first five years after he invented the said improvement he devoted his entire time and attention to the same, and that he has been, ever since the difficulty arose with the said Silk Manufacturing Company, endeavoring to extricate himself and his said invention from the complications in which they involved him, and that these efforts have occupied nearly his entire time and attention. That he has never received a compensation for his time during any portion of the term of said patent from the invention in question. That for the period of about one year he received about four hundred and thirty-seven dollars, while superintending the erection of machinery, &c., after he had sold out to the said company the right in said invention. That deponent has shown by his statement of account that, as near as he is able to state the same, he has realized eighteen hundred and fifty-one dollars from said invention, but this deponent does not consider to have paid him for his time, and this, compared with the public benefit of the said invention, which is estimated in millions of dollars, shows conclusively that he has not been adequately remunerated for the said invention and the introduction thereof into public use; and therefore he believes that the extension of the said letters patent will be an act of justice.

WILLIAM SMITH.

Sworn before me this fifteenth day of December, 1866.

CHA'S H. SMITH,
Notary Public.

NEW YORK, *Feb.* 22, 1867.

SIR,—Enclosed you will receive affidavits in the matter of extension of Wm. Smith's Patent on Weaving Corded Fabrics, granted April 5, 1853.

You will please send me a copy of the Examiner's Report on this case as soon as made out.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER.

1383 N. Y. supreme court.

WILLIAM SMITH, ELLEN M. SMITH, AND WILLIAM SHARPE,
vs.
THE SILK MANUFACTURING CO., BENJAMIN F. LEE, JAMES CAMPBELL, WILLIAM JUDSON, AND THE GOODYEAR ELASTIC FABRICS CO.

The people of the State of New York to A. I. Robinson and Dean Peabody, esquires, counselors at law of the city of Boston, and commonwealth of Massachusetts, or either of them:

Know ye that we, with full faith in your prudence and competency, have appointed you commissioners, and by these presents do authorize you or either of you to examine William R. Perkins, Charles Winslow, Daniel C. Hood, Jonathan Pierce, W. D. Edson, Nathan Nichols, Joseph Dix, William Faxon, and Joseph S. Lovering, all of said Boston, as witnesses in a cause pending in the supreme court of the State of New York, wherein William Smith, Ellen M. Smith, and William Sharpe are plaintiffs and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company are defendants, on the part of the plaintiffs, on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witnesses and return the same according to the directions hereunto annexed.

Witness honorable Thomas W. Clarke, one of the justices of our said court, at the city hall, in the city of New York, on the 2nd day of July, one thousand eight hundred and sixty-six.

[L. S.] W'M C. CONNER, *Clerk.*

This commission, when executed, is to be returned by mail to "William C. Conner, esquire, clerk of the city and county of New York, New York City, N. Y."

The execution of this commission appears in certain schedules hereunto annexed.

A. J. ROBINSON, *Commissioner.*

1384 Interrogatories to be administered to Jonathan Pierce, of the city of Boston, State of Massachusetts, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before A. J. Robinson and Dean Peabody, esq's, residing in Boston, in the State and Commonwealth of Massachusetts, commissioners therein, or either of them named, in a certain action now pending and at issue in the supreme court, in the city and county of New York, in the State of New York, wherein William Smith, Ellen M. Smith his wife, William Sharpe, are plaintiffs, and the Silk Manufacturing Co., Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Co. are defendants, on the part and behalf of said plaintiffs.

Interrogatory first. What is your name, age, residence, and business, and what was your residence in 1859, '60, and '61?

Int. second. Did you know anything of the Goodyear Elastic Fabrics Co. in the above year, or of its business in that and the following year?

Int. third. If, in answer to the last interrogatory, you shall answer that you did know of its business in the year' 1859 to 1862, state, if you

can, as near as you can, if you know what amount of goods was stamped by said company, in the years 1859 to 1862, and what tariff per yard was then charged by said company.

Int. fourth. Do you know any other matter or thing pertinent to the issues of this action that may tend to the benefit of said plaintiffs therein? If so, state the same fully as if you were particularly interrogated thereto.

Allowed 2d July, 1866.

THOMAS W. CLARKE.

Interrogatories to be administered to Daniel C. Hood, of the city of Boston, State of Massachusetts, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before Ad. J. Robinson and Dean Peabody, esq's, residing in Boston, in the State and Commonwealth of Massachusetts, commissioners therein, or either of them named, in a certain action now pending and at issue in the supreme court, in the city and county of New York, and in the State of New York, wherein William Smith, Ellen M. Smith his wife, and W'm Sharpe are plaintiffs, and the Silk Manufacturing Co., Ben-
1385 jamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabric Co. are defendants, on the part and behalf of said plaintiffs.

Interrogatory first. What is your name, age, business, and residence, and what was your business and residence from 1859 to 1862?

Int. second. Do you know either of the parties to this suit named in the above caption to these interrogatories; if yea, which of the said parties do you know, and how long have you known them, or either of them?

Int. third. Was you conversant with the stamping of imported or domestic elastic webbing or goods used for Congress boots, or other purposes, during the years of 1862 and 1863, and do you know or can you state near the amount or number of yards stamped during these years and the average sum charged per yard for the same, and, if you know, state the same as nearly and fully as you can touching these inquiries?

Int. fourth. Do you know any other matter or thing pertinent to the issues of this action which may tend to the benefit of the plaintiffs? If so, state the same as fully as if especially interrogated thereto.

Interrogatories to be administered to Joseph S. Lovering, Nathan Nichols, Joseph Dix, and William Faxon, of the city of Boston, State of Massachusetts, witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before A. J. Robinson and Dean Peabody, esq's, residing in the city of Boston, in the State and Commonwealth of Massachusetts, or either of them, the commissioners therein named, in a certain action now pending and at issue in the supreme court, in the city and county of New York, in the State of New York, wherein William Smith, Ellen M. Smith his wife, and William Sharpe are plaintiffs, and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company are defendants, on the part and behalf of the plaintiffs.

Direct interrogatories to be administered to Joseph Lovering:

First interrogatory. What is your name, residence, and occupation, and what was your place of residence and business since 1860?

Second interrogatory. Do you know the parties to this suit or either

of them named above in the caption to these interrogatories; and, if so, which of said parties do you know, and how long have you known them or either of them?

1386 Third interrogatory. Have you ever been engaged in business with or for the Goodyear Elastic Fabrics Company, or either of the parties above named in the title to this suit? If so, for which of said parties and when, how long, and in what way or capacity were you so engaged with such party or parties, and when did your connection cease? State fully.

Fourth interrogatory. Do you know of anything of a patent at any time held by the plaintiff, William Smith, for weaving elastic-corded fabrics, and had you any connection or anything to do with such a patent; if so, what do you know of it, and what, if anything, had you to do with the same?

Fifth interrogatory. If in answer to the last-above interrogatory you shall say that you know of the patent therein mentioned, had you any interest in the same; and, if so, when and how was it acquired, from whom, and under what circumstances was it acquired by you?

Sixth interrogatory. Had you any dealings, conversation, or communication, verbal or written, relating to the patent mentioned in the fourth interrogatory above, with the plaintiff, William Smith, in respect to or connection with either of the defendants in this action, or on behalf of either of them?

Seventh interrogatory. If in answer to the fifth interrogatory you shall say that you acquired an interest in the patent therein named, state if you required or received any security for the purchase money paid by you. Was such security given and who were the persons giving the same?

Eighth interrogatory. If you shall say that you made the purchase alluded to in the last-above interrogatory, did you apply to or was you recommended to a lawyer to prepare the papers on such purchase; if so, to what lawyer did you apply or was you recommended; and who, if anybody, made such recommendation?

Ninth interrogatory. Did you or any company with which you was connected ever import from Europe any of the patent machinery of the plaintiff, William Smith; and, if so, how much of said machinery was so imported by you or such company, and with it did you or said company manufacture in the State of Massachusetts or elsewhere; and what number of machines were made in this country under Smith's patent to your knowledge? State fully.

Tenth interrogatory. If in answer to interrogatory third you shall say that you was at any time engaged in business with the Good-

1387 year Elastic Fabrics Company, state if you was so engaged with said company in the years 1859, 1860, and 1861, or either of said years; did said company during any time you was with it stamp any goods, and, if it did, state as nearly as you can the number of yards so stamped by it annually, and the prices at which the same were stamped. Answer fully.

Eleventh interrogatory. Was said Elastic Fabrics Company paid by other parties for stamping imported elastic webbing during the years last-above mentioned, and was said company receiving tariffs upon such goods? If you shall answer in the affirmative, state as nearly and fully as you can the parties so paying and the amounts so paid monthly or annually for such stamping and tariffs, or either.

Twelfth interrogatory. If you shall answer interrogatory third in the affirmative, did you own any stock in the Goodyear Elastic Fabrics

Company; if so, how much? And state if you know whether said company was at any time sold out, who was or were the purchasers, and for what amount was it sold?

Thirteenth interrogatory. Look at the paper-writing herewith to the commission attached, and state, if you know, if similar papers or guarantees were executed and signed by or on behalf of said Elastic Fabrics Company and given to parties dealing with said company?

Fourteenth interrogatory. Do you know or can you set forth any other matter or anything material to the subject of this your examination, or which may in any wise tend to the benefit of the plaintiffs in this action? If yea, set forth the same and all the particulars and circumstances thereof according to the best of your knowledge, information, and belief.

Allowed 2d July, 1866.

TH. W. CLARKE.

Direct interrogatories to be administered to Nathan Nichols, Joseph Dix, and William Faxon, and each of them:

First interrogatory. Your name, residence, and occupation for five years past?

Second interrogatory. Do you know either of the parties to this suit named in the title to these interrogatories; if yea, which of said parties have you known, and how long have you known them or either of them?

1388 Third interrogatory. Was you at any time in negotiation with the plaintiff William Smith for the purchase of a patent weaving elastic corded fabrics, or for the use of such fabrics manufactured under any patent owned by him? And if you say that you was in negotiation with him, state what such negotiation was and when and where the same took place; state fully.

Fourth interrogatory. Was you familiar with the trade and importation of elastic webbing used in the manufacture of Congress boots, and do you know the quantity consumed in the Eastern States, or either of them, during either of the years 1859, 1860, and 1861, and all of them? If so, state the same, giving full and detailed particulars and all circumstances connected therewith fully, to the best of your knowledge, remembrance, information, or belief.

Fifth interrogatory. Do you know or can you set forth any other matter or thing material to the subject of this your examination, or which may in any wise tend to the benefit of the plaintiffs in this action? If yea, set forth the same and all the particulars and circumstances thereof, according to the best of your knowledge, remembrance, information, and belief.

Allowed 2d July, 1866.

TH. W. CLARKE.

Deposition of witnesses produced, sworn, and examined the tenth of July, in the year one thousand eight hundred and sixty-six, at Boston, in the county of Suffolk and Commonwealth of Massachusetts, under and by virtue of a commission issued out of the supreme court of the State of New York, in a certain cause pending and at issue between William Smith, Ellen M. Smith, and William Sharpe, plaintiffs, and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company, defendants, as follows:

JOSEPH DIX, of Dorchester, in the county of Norfolk and Common-

wealth of Massachusetts, merchant, aged fifty years and six months, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

1389 First. To the first interrogatory he saith: My name is Joseph Dix; I reside in Dorchester, Massachusetts, and am by occupation a merchant, doing business in Boston.

Second. To the second interrogatory he saith: I am acquainted with M'r William Smith, and I know the Goodyear Elastic Fabrics Company, having had dealings with them. I have known M'r William Smith ten years or more, and the Goodyears Elastic Fabrics Company from or about the date of the organization of the company.

Third. To the third interrogatory he saith: I did enter into negotiation with M'r W'm Smith for the purchase of his patent and for the right to use the fabrics manufactured under said patent. These negotiations were commenced in the early part of the year 1862, and terminated about the middle of April in same year. Neither the purchase nor the right to use was acquired. The negotiations were carried on partly in Boston and partly in New York. M'r Smith proposed to sell to me and others the entire patent for the sum of twenty-five thousand dollars and a royalty of three cents a yard, and had we been satisfied with the title I have no reason to doubt that the purchase would have been made upon those terms.

Fourth. To the fourth interrogatory he saith: I am familiar with the trade and importation of elastic webbing used in the manufacture of Congress boots. I am unable to state the amount used in the Eastern States or either of these during the years 1859, 1860, and 1861; have made no careful estimate, but know it to have been very large. Should not hesitate to say, from my general knowledge of the trade, that the amount used in those years would not fall short of five hundred thousand yards for each of said years.

Fifth. To the fifth interrogatory he saith: The agreement, a copy of which is signed by me and annexed to this my deposition, in accordance with which the Goodyear Elastic Fabrics Company agree to defend against all lawful claims for infringing the patent of W'm Smith, was issued to me and my copartners by said company, and I have no reason to doubt to all other persons similarly situated. The royalty was paid on the stamping from the year 1862 to July, 1865. The firm of which I was a member, Joseph Dix & Co., purchased but a small amount of the elastic webbing during 1863, 1864, and 1865; say, about from fifteen to twenty thousand dollars.

JOSEPH DIX.

1390 Examination taken, reduced to writing, and by the witness subscribed and sworn to this eleventh day of July, A. D. 1866, before—

A. J. ROBINSON,
Commissioner.

OFFICE OF THE GOODYEAR ELASTIC FABRICS COMPANY,
New York.

This Agreement made this twenty-second day of April A. D. eighteen hundred and sixty-one, between the Goodyear Elastic Fabrics Company, of the first part and (Joseph Dix and Elias C. Chapin) Joseph Dix & Co. of the second part, witnesseth, whereas Letters Patent of the United States were issued to Charles Goodyear June 15th, 1844, for a new and useful improve-

ment in India Rubber Fabrics, which were surrendered and reissued December 25th, 1849, and on the 14th June, 1853, were extended for seven years and on the 20th day of November, 1860, were surrendered and reissued in two Letters Patent for new and useful improvements in the art of preparing and in the manufacture of Caoutchouc, which Letters Patent it is claimed that the party of the second part had infringed, and whereas the party of the first part on the account under such patents of the exclusive right to make, use and sell all plaited, woven, braided, knitted, shired, or corrugated goods made in part or whole with India Rubber such as is described in such letters Patent.

Now, therefore, in consideration of the sum of one dollar paid by the party of the second part to the party of the first part; the party of the first part hereby releases the party of the second part from all past damages for infringing the rights claimed by this Company, to manufacture and sell and use india rubber fabrics of any sort.

And the party of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that they will not hereafter manufacture, use or sell or cause or procure to be manufactured or used or sold, any Elastic Fabrics made, in part or in whole, of india rubber, the rights of which are secured to said Company under said Patents, in any form, until the same shall have been stamped by said Company, its successors or assigns with its stamp, and will not be engaged directly or indirectly in any infringement or violation of the rights which are secured to this Company under said Patents in any form.

1391 And the party of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that they will not hereafter import or procure to be imported any Elastic Fabrics made in part or whole of india rubber, the rights of which are secured to said Company under said Patents in any form, without the license of said Company, its successors and assigns, first had and obtained and that they will not sell or use such goods until the same shall have first been stamped by said Company, its successors or assigns with its stamp.

And the party of the first part does by these presents license and authorize the said party of the second part to purchase in Europe or other foreign countries and import into the United States Elastic Fabrics made in whole or in part of india rubber, the rights to use which are secured to said company and to use and sell said fabrics when the said party of the second part shall have first caused the same to be stamped with the stamp of this company, and shall have paid to said company the license-fees or royalty described in this license.

And the party of the first part hereby agrees to stamp the said goods with the stamp of this company when requested to do so, by the party of the second part on the payment of the license-fees or royalty described in this license.

And the license-fees or royalty which the party of the second part covenant and agree to pay to the party of the first part is ten cents the yard of thirty-six inches on woven or braided elastic gusseting for boots or shoes of not exceeding five inches in width unless other widths are agreed upon, imported by said party of the second part or in the hands of or owned by the said party of the second part on the day of the date of this license.

And on the arrival of the goods ten per centum on the cash cost landed of all other Elastic Fabrics the rights of which are secured to this company by said Patents in any form imported by the party of the sec-

ond part or in the hands of or owned by the said party of the second part on the day of the date of this license.

It is also covenanted and agreed that the cash cost landed of Elastic Fabrics other than gusseting for boots or shoes will change whenever Congress will alter the tariff on importations into the United States and that under the tariff passed March 2, 1861, the cash value of one pound sterling shall be considered as six dollars and seventy cents, the
1392 same basis of calculations used to fix the cash cost of English currency, shall be applied to ascertain the cash cost of the moneys of other foreign countries.

And the party of the first part covenants and agrees that no higher rates shall be demanded of the party of the second part during the continuance of the said patents. And the party of the first part agrees to protect the party of the second part against all lawful claims made against them by any other person owning the rights under said Goodyear Patents, to make and sell the goods so stamped as aforesaid by the party of the first part. And also to defend the party of the second part against all lawful claims made against them for infringing the patent of William Smith, by the use or sale of the goods so stamped by the party of the first part under this license.

It is the intention of this Company to give the same terms to all parties who may take licenses from them for the same class of goods and when the terms are changed by diminishing the same, to make the same changes for all such licenses giving six months notice of their intention so to do.

Until further notice the terms of this License are to be as herein mentioned, and the said party of the second part, covenant to comply with this agreement and to pay the License fees for royalty herein provided for.

In Testimony whereof the said Company has caused their seal to be affixed and these Presents to be signed by their President or their Treasurer and countersigned by their Secretary in their behalf, and the party of the second part have hereunto set their hand and seal the day and year above written.

(Signed) J. M. HOOD, *Treas'r.* [L. S.]
(Signed) JOSEPH DIX & CO. [L. S.]

W. S. SHATTUCK, *Secretary.*

Executed in presence of—
Witness to signatures of party of the first part:
EDWARD B. HOOD.
Witness to signatures of party of the second part:
HENRY M. SNELL.

1393 The Licensee will for the present instruct his correspondent in Europe to apply to M. H. Allen, No. 93 Wellington st., Leicester, England, for bonds with the stamp of this Company for all small wares.

JOSEPH DIX.

At the execution of a commission for the examination of witnesses between William Smith, Ellen M. Smith, and William Sharpe, pl'ffs, and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company, defendants, the paper writing was produced and shown to Joseph Dix and by him deposed unto at the time of his examination before

A. J. ROBINSON,
Commissioner.

DANIEL C. HOOD, of Dorchester, in the county of Norfolk and commonwealth of Massachusetts, merchant, aged twenty-eight years and ten months, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Daniel C. Hood; my age is twenty-eight years and ten months. My business is that of a merchant. I reside in Dorchester, Massachusetts. I resided in the city of Brooklyn, New York, from the year 1859 to the spring of 1861. I removed to the city of Boston, where I have ever since had my place of business.

Second. To the second interrogatory he saith: I know William Judson; also Charles Rice, formerly a director of the Goodyear Elastic Fabrics Company; also Henry L. Daggett, Joseph S. Lovering, both of Boston, and Warren S. Shattuck of New York, all of whom were at one time officers of said company. I have known them all for not less than five years.

Third. To the third interrogatory he saith: I was conversant with the stamping of imported webs, but not of domestic webs, during the years 1862 and 1863. I should say, as nearly as I can estimate without exact data before me, that the whole number of yards stamped during the years 1862 and 1863, would not be less than one million, and the average sum charged per yard for the same was ten cents.

1394 Fourth. To the fourth interrogatory he saith: I know that the domestic web was all stamped at the factory in East Hampton, Mass. Certain agreements were issued by the Goodyear Elastic Fabrics Company in accordance with which persons using for manufacturing purposes, or selling vulcanized elastic web for Congress boots, were obliged to use web stamped by said company, the said company agreeing to protect the persons thus obligated against any suits which might be brought for any infringement of the patent of W'm Smith. I know that such agreements were issued in the year 1861. The number thus issued was large.

DANIEL C. HOOD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this eleventh day of July, A. D. 1866, before

A. J. ROBINSON.

JOSEPH S. LOVERING, of Boston, in the county of Suffolk and commonwealth of Massachusetts, merchant, aged fifty-eight years and eight days, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Joseph S. Lovering; I reside in Boston; and my business since 1860 has been that of a merchant.

Second. To the second interrogatory he saith: I am acquainted with the plaintiff, W'm Smith, also with W'm Judson and the Goodyear Elastic Fabrics Company. Have known M'r Smith for about four years, M'r Judson for about five years, and the said company for about five years.

Third. To the third interrogatory he saith: I was engaged in business with the Goodyear Elastic Fabrics Company as treasurer for said company, residing in Boston. My connection therewith begun the latter part of the year 1861. I have not been engaged in business with any

of the other parties named in said action. I continued to act as treasurer of said company for about two years and a half. My connection with the company as treasurer ceased some time in the year 1864. I had no further connection with the said company.

Fourth. To the fourth interrogatory he saith: I do know that M'r William Smith, one of the plaintiffs named in this suit, claimed
1395 that he had a patent for weaving elastic fabrics, and I further know that the Goodyear Elastic Fabrics Company placed the matter of M'r Smith's claim in the hands of counsel for examination, and the report of the counsel was that M'r Smith had no title; that the title vested in other parties, whose names I do not now recollect, to whom Goodyear Elastic Fabrics Company paid a certain amount of money, the amount of which I have not now in mind, for the transfer of their right to said company, and said rights were so transferred in due form. I had no other connection with the patent claimed by William Smith.

Fifth. To the fifth interrogatory he saith: I had no interest in said patent except such as I might derive as a stockholder in the Goodyear Elastic Fabrics Company under and by virtue of the transfer named in my last preceding answer.

Sixth. To the sixth interrogatory he saith: I have at different times had general communication with M'r Smith in relation to his patent. I have received several written communications from M'r Smith in relation to his patent; but have no recollection of ever having replied to the same or any of them, and have no definite recollection of the contents or purport of any of said letters, except that they all related to his patent.

Seventh. To the seventh interrogatory he saith: I do not know that any security was either required or given at the time the Goodyear Elastic Fabrics Company made their purchase, or at any time thereafter.

Eighth. To the eighth interrogatory he saith: A lawyer was recommended, I cannot say by whom. His name was William P. Lee, of New York city. The whole matter was committed to his hands as special counsel for the company.

Ninth. To the ninth interrogatory he saith: The Goodyear Elastic Fabrics Company did, during my connection therewith as treasurer of the company, import from Europe machinery for the manufacture of woven elastic web and other elastic goods.

The said company had also built in America machinery for the manufacture of woven elastic web and other elastic goods. None of the machinery so imported or manufactured was that claimed under the patent of W'm Smith, so far as I can understand the same. I cannot say precisely how much machinery was so imported or so made. The
1396 number of looms for the manufacture of the elastic web imported during my connection with the company was one or two, imported simply as sample looms. The whole number of looms built by the company, or for the company's use, was thirty or forty during the same period. The company did manufacture gusset web and other varieties of elastic goods in the State of Massachusetts, in the town of East Hampton.

Tenth. To the tenth interrogatory he saith: During a part of the year 1861, I was treasurer of the company. During the years 1859 and 1860, I had no business connection with the Goodyear Elastic Fabrics Company. During my connection with the said company they did stamp, but the number of yards so stamped it is not possible for me to state definitely. The quantity was considerable. The price charged for

stamping was with the consent of the Lynn Shoe Manufacturers, ten cents per lineal yard.

Eleventh. To the eleventh interrogatory he saith: I do not know whether the said company was or was not paid for stamping imported webbing during the year 1861, by other parties. They were subsequently paid for stamping imported webbing by other parties. I am not aware that the company received any tariffs during the year 1861.

Twelfth. To the twelfth interrogatory he saith: I did own stock in the company to the amount of fifty shares, . . . the par value of which was one hundred dollars. A portion of the property of the company was sold, comprising its property at East Hampton, to M'r Christopher Meyer, about June, 1865, I do not know for what consideration.

Thirteenth. To the thirteenth interrogatory he saith: Agreements like the one attached to this commission, here, signed by the Goodyear Elastic Fabrics Company, and given to parties dealing with said Company.

Fourteenth. To the fourteenth interrogatory he saith: The Goodyear Elastic Fabrics Company did receive royalties upon the class of goods claimed to be manufactured under M'r William Smith's Patent. Royalties were also collected upon various other fabrics by the company, and it is therefore impossible for me to state the precise amount received on the gusset web. I have often seen the machinery for making the gusset web, in operation in East Hampton. Part of the looms in
1397 use there are double shuttle looms, making one side of the goods of cotton, and one side of silk. The whole number of looms of this kind in operation at East Hampton is about thirty-five. The firm with which I was connected (Stoddard, Lovering & Company, of Boston) had the selling of the principal portion of the gusset web, for about one year or more after my retiring from the treasurership of the company.

J. S. LOVERING.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twelfth day of July, A. D. 1866, before

A. J. ROBINSON,
Commissioner.

OFFICE OF THE GOODYEAR ELASTIC FABRICS COMPANY,
New York.

This Agreement made this day of A. D. eighteen hundred and sixty , between the Goodyear Elastic Company, of the first part and of the second part, Witnesseth, whereas letters patent of the United States were issued to Charles Goodyear, June 15th, 1844, for a new and useful improvement in India Rubber Fabrics, which were surrendered and reissued December 25th, 1849, and on the 14 June, 1858 were extended for seven years and on the 20th day of November 1860 were surrendered and reissued in two letters patent for a new and useful improvements in the art of preparing and in the manufacture of Caoutchouc, which letters patent it is claimed that the part of the second part ha infringed and whereas the party of the first part are the owners under such patents of the exclusive right to make, use, and sell all plaited, woven, braided, knitted, shirred or corrugated goods made in part or whole with India rubber, such as is described in such letters patent.

Now, therefore, in consideration of the sum of one dollar paid by the part of the second part to the party of the first part, the party of the

first part hereby releases the part of the second part from all past damages for infringing the rights claimed by this company to manufacture and sell and use India rubber fabrics of any sort.

And the part of the second part hereby covenant and agree
1398 with the Goodyear Elastic Fabrics Company, its successors and assign that will not hereafter manufacture, use or sell, or cause or procure to be manufactured or used or sold any Elastic Fabrics, made in part or in whole of india rubber, the rights of which are secured to said Company under said patents in any form, until the same shall have been stamped by said company, its successors or assigns, with its stamp, and will not be engaged directly or indirectly in any infringement or violation of the rights which are secured to this Company under said patents in any form.

And the part of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns that will not hereafter import or procure to be imported any elastic fabrics made in part or whole of india rubber, the rights of which are secured to said Company, under said patents in any form without the license of said Company, its successors or assigns first had and obtained and that will not sell or use such goods until the same shall have first been stamped by said Company, its successors or assigns, with its stamps.

And the party of the first part further agree to protect the part of the second part against all lawful claims made against by any other persons owning the rights under said Goodyear Patents, to make and sell the goods so stamped as aforesaid by the party of the first part. And also to defend the part of the second part, against all lawful claims made against for infringing the patent of William Smith by the use or sale of the goods so stamped by the party of the first part.

In testimony whereof the said Company has caused their seal to be affixed and these presents to be signed by their president or their treasurer, and countersigned by their secretary in their behalf and the part of the second part ha hereunto set hand and seal the day and year above written.

Secretary.

Executed in presence of—

Witness to signature of party of the first part.

Witness to signatures of part of the second part.

JULY 13, '66.

Shown to me this day.

J. S. LOVERING.

1399 At the execution of a commission for the examination of witnesses between William Smith, Ellen M. Smith and William Sharpe, pl'ffs, and the Silk Manufacturing Company, Benjamin F. Lee, James Campbell, William Judson, and the Goodyear Elastic Fabrics Company, defendants, this paper writing was produced and shown to Joseph S. Lovering and by him deposed unto at the time of his examination before

A. J. ROBINSON,
Commissioner.

JONATHAN PIERCE of Salem, in the county of Essex, and Commonwealth of Massachusetts, merchant, aged fifty-two years, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiffs doth depose and say as follows:

First. To the first interrogatory he saith: My name is Jonathan Peirce. I am fifty-two years old, live in Salem, Massachusetts, and am by occupation a merchant. I have always lived in Salem.

Second. To the second interrogatory he saith: I became connected with the Goodyear Elastic Fabrics Company in the year 1861, and was acquainted with their business from that time forward for about four years. I had charge of a department of the stamping.

Third. To the third interrogatory he saith: I do not know the amount of stamping, had no means of knowing. The price was ten cents a yard for stamping. I know that the amount of stamping was very large, though I can make no definite statement in relation thereto.

Fourth. To the fourth interrogatory he saith: I know that elastic webbing has been manufactured at East Hampton, which M'r William Smith claims to have been manufactured under his patent, and that the Goodyear Elastic Fabrics Company entered into agreements with the parties with whom they were dealing, to protect them against M'r Smith's patent. The number of such agreements entered into by said company I should say to be from one thousand to fifteen hundred. These agreements continued to be issued from time to time, to my certain knowledge up to the year 1864.

JONATHAN PEIRCE.

1400 Examination taken, reduced to writing and by the witness subscribed and sworn to this twelfth day of July, A. D. 1866, before

A. J. ROBINSON,
Commissioner.

Supreme court city and county of New York, ss:

WILLIAM SMITH, ELLEN M. SMITH, AND William Sharpe
vs.
THE SILK MANUFACTURING COMPANY, Benjamin F. Lee, James Campbell, William Judson, and The Goodyear Elastic Fabrics Company.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward P. Coules, of said city and county, being duly sworn, deposes and says that he is the referee appointed by the above-named court to hear and determine this whole case, and that he has been engaged for more than one year now last past in the hearing of the same. That a portion of the testimony put in in such cause, on such hearing and trial before him, consists of the testimony of Joseph Dix, Daniel C. Hood, J. S. Lovering, and Jonathan Peirce, taken under and by virtue of a commission issued out of said court to A. J. Robinson and Dean Peabody, counselors at law, of the city of Boston, Massachusetts. Which said commission has been duly returned and has been now for some months last past in this deponent's possession as such referee, and the testimony of which said persons taken thereunder has been read in evidence in this cause before deponent as such referee.

Deponent further says that the foregoing copy is made in the handwriting of John B. Perry, an attorney at law of this court, in deponent's law office, to whom this deponent gave the aforesaid commission and testimony thereunder to be copied, and the same purports to be a copy of such commission and testimony, but deponent has not compared said copy with the original aforesaid.

E. P. COWLES.

Sworn to before me this 20th day of February, 1867.

W'M T. FARNHAM,
Notary Public, State, City, and County of New York.

1401 CITY AND COUNTY OF NEW YORK, *ss:*

JOHN B. PERRY, being duly sworn, deposes and says that he is an attorney at law of this court, and occupies the same office with Edward P. Cowles, the above deponent. That deponent has read the foregoing affidavit by said Cowles, and that the same is true; that this deponent did receive said commission and testimony from said Cowles and copied the same, and that the foregoing annexed thirty-eight pages is a full and true copy of the said commission and interrogatories and testimony, as appearing in said original of Joseph Dix, Daniel C. Wood, I. S. Lovering, and Jonathan Pierce, and deponent has compared the said foregoing copy with the original, and the same is a correct and true copy thereof, and of the whole of the testimony of said above-named witnesses.

JOHN B. PERRY.

Sworn to before me this 20th day of February, 1867.

W'M T. FARNHAM,
Notary Public, State, City, and County of New York.

In the matter of extension of letters patent granted April 5, 1853, to William Smith for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
County of Suffolk, and State of Massachusetts, ss:

JAMES C. ELMS, being duly sworn, says:

1. That he is a dealer and importer of elastic webbing, shoe findings, etc., in the city of Boston, and that he knows, and has been acquainted with, the above-named William Smith for the last ten years.

2. That he knows of the early efforts made by said Smith to introduce in the market the improvement in question; and he believes that he exercised reasonable diligence, devoted almost all of his working time to the same, and availed himself of all reasonable and lawful means for making profit by said invention.

1402 3. That he knows generally, from information and belief and public documents, the difficulties that attended said Smith, in the early part of his operations under his patent, and from information and belief that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with his patent.

4. That from information and belief he is generally knowing to the efforts of the Silk Manufacturing Company so to manage their affairs that there should not be any profit resulting to the said Smith.

5. That the deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and the said Smith has been justified and necessitated to pursue the same, as his only prospect for recovering his rights and making profits by the said invention.

6. And this deponent further says that said Smith, without neglect or fault of his part, has, by the improper actions of others, been cut off from all source of profit from said invention for ten years at least of the term of his patent.

7. That deponent verily believes the value and importance of the said invention to the public to be very great, that deponent estimates the same at one and a half millions of dollars.

8. That deponent is knowing to the fact that elastic webbing made pursuant to said patent has been sold very extensively; that from facts within the sphere of deponent's observation, he should estimate there had been ten millions of yards sold or used during the term of said patent in the United States, and probably much more.

9. This deponent has no accurate knowledge of the number of yards of suspender webbing, garter webbing, elastic, etc, made according to said patent, but believes it to be very great.

10. That deponent verily believes that in the better qualities of said fabrics a profit of fifty cents per yard was made between the cost price and the price to the consumers, and that the profits ranged down to ten cents per yard.

11. That deponent is aware that the Elastic Fabrics Company, under Goodyear patent, charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping 1103 elastic fabrics woven according to the plan of Smith's patent, and that the manufacturers' and sellers' profit, of course, was additional.

12. That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to different persons and firms for infringing William Smith's patent, to hold them harmless from any claim under the patent in question.

13. That deponent never became possessed of any information to impair the novelty of the invention of said Smith, but on the contrary he believes that a standing warp on each side of which a fabric is woven was new when invented by said Smith.

14. That this deponent further says that in the early part of 1862 negotiations were entered into to purchase said patent by the following firms in this city, Boyce and Nichols, Joseph Dix and Co., Faxon and Elms (of which this deponent is one), on the following conditions: Twenty-five thousand dollars in cash and three cents a yard royalty on all goods made or sold; but through the improper action of others Smith could not give a clear title to the same, and that was the only reason why the matter was not consummated.

15. That deponent believes that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention and the introduction thereof into use, and he believes that he is in justice entitled to an extension of the said letters patent for the term of se years, according to law so provided.

JAMES C. ELMS.

Sworn to before me this 22d of December, 1866.

JOHN J. CURTIS,
Notary Public.

In the matter of the extension of letters patent granted April 5, 1853, to William Smith for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
In the County of Suffolk and State of Massachusetts, ss:

CHARLES WINSLOW, being duly sworn, says:

That he knows the above-named William Smith, and has been acquainted with him for twelve years or more.

1404 That he knows the early efforts made by him to introduce the improvement in question, and he believes and knows that he exercised reasonable diligence, and devoted almost all his working time to the same, and availed of all reasonable and lawful means of making profit by the said invention.

That he was a manufacturer of Congress boots and so still continues, and was agent for Horace H. Day for the Eastern States, and was in conflict with the goods made by Smith's patent, and knows of the struggles and difficulties experienced by Smith in the years of 1854, 1855, 1856, and believes that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with said patent.

That deponent is generally knowing to the effort of the majority of said company so to manage their affairs that they should not be any profit to said Smith.

That deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and that the said Smith has been justified and necessitated to pursue the same as the only prospect of recovering his rights and making profit by said invention.

That deponent believes that said Smith has not been adequately remunerated for the time, ingenuity, and expense of devising and developing of the said invention.

That this deponent believes that said Smith, without neglect or fault of his own part, has by the improper actions of others been cut off from all source of profit from said invention for ten years at least of the term of his patent.

That the deponent verily believes that the value and importance of the said invention to the public to be very great. That deponent knows that great quantities of goods made by said invention has been sold in the market, but what the amount might foot up this deponent has no means of knowing.

That deponent is aware that the Elastic Fabrics Company charged parties a license fee, ranging from twenty-five cents per yard down to ten cents per yard, for stamping elastic fabrics made and woven according to the plan of the said Smith's patent.

1405 That deponent is aware that the said Elastic Fabrics Company issued guarantees to persons using goods made by said patent in question, and for infringing Smith's patent, and deponent never heard of anything to impair the novelty of said invention made by Smith, but knows the same to be useful and beneficial to the public, and believes he is entitled to seven years' extension, according to law.

CHARLES WINSLOW.

Sworn to before me this 19th of December, 1866.

JAMES J. CURTIS,
Notary Public.

In the matter of extension of letters patent granted April 5, 1853, to William Smith, for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
In the County of Suffolk and State of Massachusetts, ss:

1. NATHAN NICHOLS, being duly affirmed, says, that he is a merchant of the above city, and has been such for many years past, and is and has been an importer and dealer in foreign and domestic elastic webbing for the manufacture of Congress boots, and is well able to judge of the use and consumption of such goods for the last ten years; and has known and been acquainted with William Smith for ten years.

2. That he knows of the early efforts made by him to introduce the improvement in question, and he believes that he has exercised reasonable diligence, and devoted almost the whole of his time to the same, and availed himself of all reasonable and lawful means for making profit by said invention.

3. That he knows generally the circumstances surrounding said Smith in the early efforts of Smith to introduce said invention into the market, and believes the assignments made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with the patent.

4. That deponent is knowing generally to the efforts of the Silk
1406 Manufacturing Company and the Elastic Fabric Company to deprive said Smith of any profits of said invention.

5. That deponent believes that the prolonged litigation which has resulted in connection with the invention and letters patent has been unavoidable, and the said Smith has been justifiable and necessitated to pursue the same as his only prospect of recovering his rights and making profit by said invention.

6. That deponent believes that said Smith has not been adequately remunerated for the time, ingenuity, and expense for devising and developing said invention.

7. That deponent verily believes that said Smith, without neglect or fault on his own part, has, by the improper action of others, been cut off from all source of profit from said invention for ten years, at least, of the term of his patent.

8. That deponent verily believes that the value and importance of the said invention to the public to be very great; that deponent estimates the value at about one and a half million of dollars.

9. That deponent is generally knowing to the fact that elastic webbing, made pursuant to said patent, has been sold very extensively; that, from facts within the sphere of deponent's observation, he should estimate that there had been upwards of ten millions of yards sold or used during the term of said patent.

10. That deponent estimates the number of yards of shoe webbing used in the Eastern States at 750,000 yards yearly, and a low estimate at that; and deponent believes, so far as he can candidly judge, that the number of yards of shoe webbing sold or used in the United States during the last thirteen years at eleven million of yards.

11. That deponent cannot give an estimate of the number of yards of suspender webbing and elastic garters, etc., made according to said patent, deponent not dealing in such articles, but should suppose them to be very great.

12. That deponent verily believes that on the better quality of said fabrics a profit of fifty cents per yard was made between the cost price and the price to consumers, and that the profits ranged from that sum down to ten cents per yard.

13. That deponent is aware that the Elastic Fabric Company, under the Goodyear patent, charged parties a license fee, ranging from
1407 twenty-five cents per yard down to ten cents per yard, for stamping elastic fabrics woven according to the plan of said Smith's patent, and that the manufacturers' and sellers' profits, of course, was additional.

14. That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for infringing said Smith's patent, and using and selling said goods, to hold them harmless from any claim under the patent in question, and that this deponent has paid said company very large sums of money under said guarantee.

15. That deponent has never become possessed of any information tending to impair the novelty of the invention of the said Smith, but, on the contrary, he believes that a standing warp on each side on which a fabric is woven was new when invented by said Smith.

16. That deponent believes that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention and introduction thereof into use, and he believes that he is, in justice, entitled to an extension of the said letters patent for the term of seven years, according to law.

NATHAN NICHOLS.

Subscribed and duly affirmed before me this 21st day of December, 1866.

SAM. S. CURTIS,
Notary Public.

In the matter of extension of letters patent granted April 5, 1853, to William Smith for improvement in weaving corded fabrics.

Hearing before Hon. Commissioner of Patents, March 18, 1867.

CITY OF BOSTON,
County of Suffolk and State of Massachusetts, ss:

WILLIAM R. PERKINS, being duly sworn, says:

1. That he is a dealer and importer of elastic webbing used in the manufacture of Congress boots, and has known said Smith and been acquainted with him these thirteen years; that deponent was formerly a manufacturer of fine Congress boots, and used webbing made by said Smith under his patent in the years 1853 and 1854; that said web-
1408 bing was good and durable, not quite so fine as what is made now, but more durable than any I have seen since.

2. That he knows the early efforts made by him to introduce the improvement in question, and he believes and knows that he exercised reasonable diligence, devoted almost his working time to the same, and availed himself of all reasonable and lawful means of making profit by the said invention.

3. That he knows generally of the circumstances surrounding the said Smith during the years of 1853, and 1854, 1855, to the spring of 1856, and believes that the assignment made by him to the Silk Manu-

facturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit in connection with said patent.

4. That deponent is generally knowing of the Silk Manufacturing Company so to manage their affairs that they should not be any profit resulting to said Smith.

5. That deponent believes the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and the said Smith has been justified and necessitated to pursue the same, as the only prospect of recovering his rights and making profit by the said invention.

6. That deponent believes that the said Smith has not been adequately remunerated for the time, ingenuity, and expense of devising and development of the said invention.

7. That the deponent verily believes that said Smith, without neglect or fault of his own part, has, by the improper acts of others, been cut off from all sources of profit from said invention for the term of ten years at least of his invention.

8. That deponent verily believes that the value and importance of said invention to the public to be very great; that the deponent estimates the value of the patent, in the market, at one million of dollars, and cheap at that.

9. That deponent is generally knowing to the fact that elastic webbing made pursuant to said patent has been sold very extensively; that from facts within the sphere of deponent's observation he should estimate that there had been million of yards sold or used in the United States during the term of said patent.

1409 10. That deponent estimates that the number of yards of suspender webbing and garter webbing made according to said patent to have been very great, but not being a dealer in such articles, cannot so confidently make any accurate statement about the quantity.

11. That deponent estimates the number of yards of shoe webbing sold or used in the United States during the last thirteen years at millions of yards.

12. That deponent verily believes that on the better qualities of said fabrics a profit of fifty cents per yard was made between the cost price and the price to consumers, and that the price ranged from that down to ten cents per yard.

13. That deponent is aware that the Elastic Fabrics Company, under the Goodyear patent, charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics woven according to the plan of the said Smith's patent, and that the manufacturers' and sellers' profit was additional.

14. That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for infringing the patent of said Smith, to hold them harmless from any claims under the patent in question.

15. That deponent has never become possessed of any information to impair the novelty of the invention of the said Smith, but, on the contrary, he believes a standing warp on each side on which a fabric is woven was new when invented by said Smith.

16. That deponent believes the said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention, and the introduction thereof into use, and he believes that he is in justice entitled to an extension of the said patent for the term of seven years, according to law.

W. R. PERKINS.

Sworn before me this 21st of December, 1866.

SAM. S. CURTIS,
Notary Public.

1410 In the matter of extension of letters patent granted April 5, 1853, to William Smith for improvement in weaving corded fabrics.

Hearing before Commissioner of Patents, March 18, 1867.

LYNN,

In the County of Middlesex and State of Massachusetts, ss:

We, the undersigned, boot and shoe manufacturers of Lynn, aforesaid, L. B. FRAZIER, E. T. BUBIER, ISAAC NEWHALL, being duly sworn, say:

1. That they know the above-named William Smith, and have been acquainted with him for many years.

2. That they know of the early efforts made by him to introduce the improvement in question, and believe that he exercised reasonable diligence, devoted most of his time to the same, and availed himself of all reasonable and lawful means for making profit by said invention.

3. That deponent is generally knowing that the Silk Manufacturing Company and the Elastic Fabrics Company so managed their affairs that they should not be any profit resulting to said Smith.

4. That deponents believe that the prolonged litigation which has resulted in connection with this invention has been unavoidable, and the said Smith has been justified and necessitated to pursue the same, as his only remedy or prospect for recovering his rights and making profit by said invention.

5. That deponents believe the said Smith has not been adequately remunerated for the time, ingenuity, and expense of devising and the development of the said invention.

6. And deponents verily believe that said Smith, without neglect or fault of his own, by the improper action of others, has been cut off from all sources of profit from said invention for ten years, at least, of the term of his patent.

7. That deponents verily believe the value and importance of the said invention to the public has been very great; that deponents estimate the same at one and a half millions of dollars.

8. That deponents well know the fact that elastic webbing made pur-
suant to said patent has been sold very extensively; from facts
1411 within the sphere of deponents' observation, they should estimate that there had been ten millions of yards sold or used in the United States of America during the term of said patent.

9. That deponents cannot estimate what number of yards of suspender webbing, elastic-garter webbing, made according to said patent, but they believe the quantities to be very great.

10. That deponents verily believe that on the better qualities of fabric a profit of fifty cents a yard was made between the cost price and the price to consumers, and the profits ranged from that sum down to ten cents per yard.

11. That deponents have full and accurate knowledge that the Elastic Fabrics Company charged parties a license fee ranging from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics woven according to the plan of the said Smith's patent, and that the manufacturers' and sellers' profit, of course, was additional.

12. That deponents are aware that the said Elastic Fabrics Company

issued many hundred guarantees to persons and firms, for selling and using said elastic fabrics, to hold them harmless for infringing William Smith's patent, and from any claim under the patent in question, and that great and vast sums of money have been paid to the Elastic Fabrics Company under the aforesaid guarantees, amounting, deponents verily believe, to millions of dollars.

13. That deponents have never become possessed of any information tending to impair the novelty of the invention of said Smith, but, on the contrary, deponents believe that a standing warp, on each side of which a fabric is woven, was new when invented by the said Smith.

14. That deponents believe that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention, and the introduction thereof into use, and the deponents believe that he is in justice entitled to an extension of the said letters patent for the term of seven years, as provided by law.

L. B. FRAZIER.
E. T. BUBIER.
ISAAC NEWHALL.

1412 COMMONWEALTH OF MASSACHUSETTS,
Essex, ss:

LYNN, *January* 31, 1867.

Subscribed and sworn to this day by the within-named L. B. Frazier, E. T. Bubier, and Isaac Newhall, before me,

EBEN PARSONS,
Justice of the Peace.

OFFICE OF THE GOODYEAR ELASTIC FABRICS COMPANY.

This agreement made this day of A. D. eighteen hundred and sixty, between the Goodyear Elastic Fabrics Company, of the first part, and of the second part witnesseth, whereas, letters patent of the United States were issued to Charles Goodyear, June 15th, 1844, for a new and useful improvement in india rubber fabrics, which were surrendered and re-issued December 25, 1845, and on the 14th of June, 1858, were extended for seven years, and on the 20th day of November, 1860, were surrendered, and re-issued in two Letters Patent, for new and useful improvements in the art of preparing, and in the manufacture of Caoutchouc, which Letters Patent it is claimed that the party of the second part have infringed, and whereas, the party of the first part are the owners under such patents, of the exclusive right to make, use, and sell all plaited, woven, braided, knitted, shirred, or corrugated goods, made in part or whole with india rubber, such as is described in such Letters Patent.

Now, therefore, in consideration of the sum of one dollar, paid by the party of the second part to the party of the first part, the party of the first part hereby releases the party of the second part from all past damages for infringing the rights claimed by this Company to manufacture, and sell, and use india rubber fabrics of any sort.

And the party of the second part, hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns that will not hereafter manufacture, use, or sell, or cause or procure, to be manufactured, or used, or sold, any elastic fabrics made in part or in whole of india rubber, the rights of which are secured to said
1413 Company, under said patents in any form, until the same shall have been stamped by said Company, its successors and assigns, with its stamp, and will not be engaged directly or indirectly in any in-

fringement or violation of the rights which are secured to this Company under said patents in any form.

And the party of the second part hereby covenant and agree with the Goodyear Elastic Fabrics Company, its successors and assigns, that will not hereafter import, or procure to be imported, any elastic fabrics made in part or whole of india rubber, the rights of which are secured to said Company under said patents, in any form, without the license of said Company, its successors or assigns, first had and obtained, and that will not sell or use such goods until the same shall have first been stamped by said Company, its successors or assigns, with its stamp.

And the party of the first part does, by these presents, license and authorize the said part of the second part to purchase in Europe or in other foreign countries, and import into the United States elastic fabrics made in whole, or in part of india rubber, the rights to use which are secured to said Company, and to use and sell said fabrics, when the said part of the second part, shall have first caused the same to be stamped with the stamp of this Company, and shall have paid to said Company the license fees or royalty described in this license. And the party of the first part hereby agrees to stamp the said goods with the stamp of this Company when requested to do so by the part of the second part, on the payment of the license fees or royalty described in this license.

And the license fees or royalty which the part of the second part covenant and agree to pay to the party of the first part, is ten cents the yard, of thirty-six inches, on woven, or braided elastic gusseting for boots, or shoes, of not exceeding five inches in width, unless otherwise agreed upon, imported by said part of the second part, or in the hands of or owned by the said part of the second part on the day of the date of this license.

And on the arrival of the goods, ten per centum, on the cash cost, landed, of all other Elastic Fabrics, the rights of which are secured to this Company, by said Patents, in any form, imported by the part of
1414 the second part, or in the hands of, or owned by the said part of second part, on the day of the date of this license.

It is also covenanted and agreed that the cash cost landed of Elastic Fabrics, other than gusseting for shoes, will change whenever Congress shall alter the tariff on importations into the United States, and that under the Tariff passed March 2d, 1861, the cash value of One Pound Sterling shall be considered as six dollars and seventy cents.

The same basis of calculation, used to fix the cash cost of English currency, shall be applied to ascertain the cash cost of the monies of other foreign countries.

And the party of the first part covenants and agrees, that no higher rates shall be demanded of the part of the second part during the continuance of the said Patents. And the party of the first part, agrees to protect the part of the second part against all lawful claims made against by any other persons, owning the rights under said Good year Patents, to make and sell the goods so stamped as aforesaid by the party of the first part. And also to defend the part of the second part against all lawful claims made against for infringing the Patent of William Smith, by the use or sale of the goods so stamped by the party of the first part under this License.

It is the intention of this Company to give the same terms to all parties who may take Licenses from them, for the same class of goods; and when the terms are changed by diminishing the same, to make the change for all such Licenses, giving six months notice of their intention so to do.

Until further notice, the terms of this License are to be as herein mentioned and the said part of the second part, covenant to comply with this agreement, and to pay the License fees or royalty herein provided for.

In testimony whereof the said Company has caused their seal to be affixed, and these presents to be signed by their President or their Treasurer, and countersigned by their secretary, in their behalf, and the part of the second part ha hereunto set hand and seal, the day and year above written.

Secretary.

Executed in presence of—
Witness to signatures of the party of the first part.
Witness to signature of part of the second part.

1415 In the matter of extension of letters patent granted the 5th day of April, 1853, to William Smith for improvement in weaving corded fabrics.

Hearing before the Commissioner of Patents, March the 18, 1867.

CITY AND COUNTY AND STATE OF NEW YORK, *ss:*

William Smith, duly sworn, says that the annexed blank form of a license is the same that was used by the Elastic Fabrics Company, issued to parties to induce them to infringe the patent of said Smith, and this deponent further says that the secretary of said company testify under oath that there were 1,300 such licenses to parties and firms by said company.

WILLIAM SMITH.

Sworn before me this 20th day of February, 1867.
CHA'S H. SMITH,
Notary Public.

In the matter of extension of letters patent granted to William Smith April 5, 1853, for improvement in weaving colored fabrics.

Hearing before Hon. Commissioner of Patents, March 18, 1853.

CITY AND COUNTY AND STATE OF NEW YORK:

JAMES E. ROGERS, being duly sworn, says:

1. That he resides at 242 West 19th street, in the above city; that he was formerly a manufacturer of boots and shoes; that deponent used elastic webbing made pursuant to Smith's patent, both before and after the issuing of said patent to said Smith. Deponent further says that he has known said Smith for the last sixteen years.

2. That deponent knows of the early efforts made by Smith to introduce the improvement in question, and knows from his own knowledge that he exercised reasonable diligence, and devoted almost all of
1416 his working time to the same, and availed himself of all reasonable and lawful means of making profit by said invention.

3. And deponent further says that he knows of his own knowledge that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be to his pecuniary benefit in connection with the patent.

4. That deponent further says that he knows of his own knowledge of the efforts made by the aforesaid Silk Manufacturing Company so to manage their affairs that they should not be any profit accrue to said Smith.

5. And deponent further says that said Silk Manufacturing (by facts within the sphere of deponent's knowledge) by false entries in their books of by forgery and perjury, they conspired to defraud said Smith, the stockholders, and creditors of said company, of all that was invested in said company.

6. That deponent believes that the prolonged litigation which has resulted in connection with this invention and letters patent has been unavoidable, and the said Smith has been justified and necessitated to pursue the same as his only prospect for recovering his rights and making profit by said invention.

7. That deponent believes that said Smith, without any neglect or fault of his own, has been, by the improper action of others, cut off from all source of profit from said invention for ten years, at least, of the term of his patent.

8. Deponent further says he believes that said Smith has not been adequately remunerated for his time, and trouble, and ingenuity, and expense of devising and developing said invention.

9. That deponent believes that the value and importance to the public has been very great, but cannot say how great, but knows the invention has become in general use.

10. That deponent is generally knowing to the fact that elastic webbing made pursuant to said patent has been extensively used and sold to the extent of many millions of yards during the term of said patent.

11. That deponent is aware, and is generally knowing to the fact, that the Elastic Fabrics Company, under the Goodyear patent, 1417 charged parties a license fee from twenty-five cents per yard down to ten cents per yard for stamping elastic fabrics woven according to the said Smith's patent, and that the manufacturer's and seller's profit, of course, was additional.

12. That deponent is aware that the said Elastic Fabrics Company issued many hundred guarantees to persons and firms for selling and using elastic fabrics made according to Smith's patent to hold them harmless for any claims for infringing the patent of William Smith.

13. That deponent has never become possessed of any information tending to impair the novelty of the invention of said Smith, but, on the contrary, he believes that a standing warp on each side, on which a fabric is woven, was new when invented by said Smith.

14. That deponent believes that said Smith has not been adequately remunerated for the ingenuity and expense bestowed upon the said invention and the introduction thereof into public use, and he believes that he is, in justice, entitled to an extension of the said patent for the term of seven years, as provided by law.

JAMES E. ROGERS.

Sworn before me this 22d day of January, 1867.

ROBERT GILLEN,
Notary Public, New York County.

Examiner's report on William Smith's application for extension of his patent of April 5, 1853.

U. S. PATENT OFFICE, *March* 6, 1867.

In the matter of the application by William Smith for an extension of his patent, dated April 5, 1853, for an improvement in weaving corded fabrics.

In the above case I have the honor to make the following report:

The invention covered by this patent is clearly expressed in the claim to be, "The process of forming a fabric by the combination of stationary and movable warps with two weft threads passed simultaneously through the two sheds, formed above and below said stationary warps;
1418 the weft threads being held in place on the surface of the stationary warps by the movable warps."

The main object was to make an elastic webbing, suitable for gores for Congress shoes, suspender webbing, etc.; the stationary warps being the rubber or elastic ones; but the stationary warps might be of ordinary threads. The word "stationary" is used to signify that the threads do not rise and fall like the movable ones in order to form a shed for the shuttle to pass.

NOVELTY.

Fabrics had been woven prior to this invention in which two shuttles were used, but in which the rubber threads rose and fell, one shuttle passing through the shed when the rubber threads were lifted and the other passing through when they were depressed, but I find no instance in which the rubber threads were not lifted and lowered and in which both shuttles passed simultaneously, thus affording a means for making a more perfect goods, with the opposite surfaces, if desired, of different material, and with much less liability of giving a ribbed surface to the fabric than in the cases where the rubber threads, from the fact of being lifted and depressed, became more or less imbedded in the filling or woof, the rubber being somewhat raised on each side.

A careful review of the state of the art up to period of the grant to this applicant satisfies me that the invention was then new.

The testimony in the case derived from manufacturers, importers, and dealers in elastic fabrics, having an experience of from ten to thirteen years, is uniform as to their never having become possessed of any information tending to impair their belief in its novelty.

UTILITY.

This invention appearing about at the period when elastic webbing o various kinds was being introduced to a considerable extent in the shoe and other manufactures and in which it was desirable to have a fabric in which one side should be of fine material such as silk and the other side of a cheaper or stronger material, and the whole present a handsome exterior whilst the rubber threads should be as much as possible concealed, it had undoubtedly much utility then, and the subsequent extensive use of such fabrics is notorious.

1419 The testimony adduced, if any doubt existed upon this point, amply attests the utility of this invention; and in this connection I would therefore direct your honor's attention to the affidavits at large.

VALUE AND IMPORTANCE TO THE PUBLIC.

The witnesses to this point are men of long and large experience in the kinds of business in which the peculiar fabric under consideration is sold and used. They with singular unanimity concur substantially in the following: That of elastic webbing about 10,000,000 or more yards have been sold in this country during the life of this patent, besides a very great amount of suspender and garter webbing, and at profits between the manufacturing and selling prices of from ten cents to fifty cents per yard.

That the Elastic Fabrics Company (Goodyear) exact from all licensees under them a license fee of from ten cents to twenty-five cents per yard for stamping goods woven according to the plan of Smith's patent. The treasurer of said company (see informally certified copy of evidence before referee) testifies that some thirteen hundred of such licenses were issued; and he, as well as witness Elms, testifies that said company guaranteed to hold the buyers and licensees harmless against any infringement of said W'm Smith's patent.

Elms also states (and his evidence is corroborated by Joseph Dix, see above stated certified copy) that his and other firms negotiated to buy the patent for $25,000, and to pay three cents a yard for all goods manufactured, but that from the improper action of others, as hereinafter stated, Smith could not give them a sufficient title.

Elms and others estimate the invention as worth to the country $1,500,000; Nichols puts it at $1,500,000. All agree that its value is very great.

EQUACY OF REMUNERATION.

The whole tenor of the evidence shows that the inventor has had but a mere pittance in return for his invention. Elms, Winslow, Nichols, Perkins, Frazier, Bubier, and Newhall state that for ten years at least, the inventor has, without fault or neglect upon his part, but by the improper actions of others, been cut off from all source of profit from said invention. They all appear to have known him and to have been
1420 cognizant of his efforts during this period, and some of them for a longer period.

This failure of remuneration appears to have been due to the causes which in his statement and affidavit he assigns for it, to wit, his lack of means. Commencing his experiments with a borrowed capital of seventy-five cents; the death of the solicitor who had his application in charge; many delays and bad work by others in building his machines; opposition in the market by large manufacturers and infringers, and their efforts to stop the sale of his goods and damage their reputation; the early difficulties in procuring vulcanized rubber threads, and then only in small quantities and from abroad, and the consequent necessity and expense and delay of his inventing machinery for cutting threads from rubber; subsequent pecuniary embarrassment, mortgaging of his machinery, distress for rent, etc., etc., ending in his flying for relief to the formation of a stock corporation, called the Silk Manufacturing Company, to which for $3,000 cash and $3,000 stock, he assigned his patent and machinery. This money went to pay his debts, leaving him but $500, and the stock proved worthless to him. Proceeding to Paterson, N. J., to prepare for manufacturing, a year passes away before he commenced; the goods which he now consigned to his associates in New York he finds they make no effort to sell; and after remonstrating and

insisting upon their sale as they are accumulating, they promising and disregarding their promises, he arranges with prominent wholesale houses of New York City to use the goods and act as agents for their sale. This arrangement his associates appear to approve, and some time after his return to Paterson he learns that they have not so disposed of any of the goods. They decline to put the goods in the market, and insist that he must attend to his own department and make the goods and machinery perfect, and they would attend to the financial part. Then commences his litigation which has continued against them and others until the present time. Since that period he does not appear to have had any control of his patent, and has been in a position antagonistic to his associates and large capitalists, whose interests seem to have been adverse to any recognition of his rights, whatever those may have been during this period.

Most of the witnesses testify to his difficulties with his asso-
1421 ciates, and to the fact of his being in litigation in regard to his patent, and that this was necessary and unavoidable, and as affording the only prospect of recovering his rights and making profit by his invention.

His account to which I would refer is quite brief, and without making any charge whatever for his time and services, it shows as—

Cash receipts	$22,340 76
" expenses	20,489 76
	$1,851 00

He remarks that if the time he has spent in the matter be taken into account, he is more than $10,000 out of pocket.

In the evidence heretofore referred to as taken before the referee, M'r Lovering, the treasurer of the Goodyear Company, states that Smith claimed from them on his patent, but as their counsel reported that he had no title, but that others had, the company paid a sum of money (unknown to him) for a transfer of their rights, and said rights were transferred. He also states that he received several communications from Smith, but did not answer them, and that the company received royalties on goods to be made under Smith's patent.

DILIGENCE.

The foregoing embodies most of the testimony upon the question of diligence of the inventor; and to which all the deponents bear favorable witness. Perkins states that Smith devoted most of his working time, and availed of all reasonable and lawful means of making profit from his invention.

Deponent Winslow says that he was, and is, a manufacturer of Congress boots, and was agent for Horace H. Day, for the Eastern States, and was in conflict with the goods made by Smith's patent, and knows of the struggles and difficulties experienced by Smith in 1854, 1855, and 1856, and believes that the assignment made by him to the Silk Manufacturing Company was made in good faith, with the expectation that it would be for his pecuniary benefit; and further, that this company tried to manage its affairs so that Smith should have no profit.

I do not find on file any opposition to the extension.

A certified copy instead of the original patent is filed, the absence of which is explained by an affidavit of applicant appended to the
1422 copy; the parties connected with the Silk Manufacturing Com-

pany, to whom it was furnished in 1856, having failed to deliver it to him, in response to his efforts to obtain the same; and he states that he is unable to produce the same, and it may have been destroyed.

All which is most respectfully submitted.

JOHN J. HALSTED,
Examiner.

Hon. T. C. THEAKER,
Comm'r of Patents.

NEW YORK, *March* 30, 1867.

SIR,—Herewith you will receive fifty dollars, being the final fee on W'm Smith's patent for weaving corded fabrics, extended on or about Ap'l 28, '67.

The patent you will please return to me as soon as possible.

Yours, etc.,

LEMUEL W. SERRELL,
Pr. WALKER.

Hon. T. C. THEAKER.

NEW YORK, *April* 12, 1867.

SIR,—The extended patent of Wm. Smith for Looms has not yet been received.

The fee are all paid, and we fear the document has miscarried. Has it been forwarded, and, if so, how directed?

Resp. yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER.

Extension No. 1866. William Smith of New York, county and state of New York. "Imp't in Weaving Corded Fabrics."

Rec'd Novr. 19, 1866.
Petition—Affidavit—Specification—Drawing—Model—rec'd in Drafts Room, Novr. 22nd, 1866.
1 Cert. dep. $50, Novr. 19, 1866—Cash.
1 add'l fee Cert. $50—April 1, 1867, add'l fee cash.
1423 Examined, Extended.
2 issue March 28, 1867.
3 patented , 186 .
Recorded vol. page X.
Circular April 1, 1867.
"Patented April 5, 1853."
Hearing March 18, 1867.
Closing T. Feb'y 26, "

L. W. SERRELL,
New York City.

Patent Extended March 28, 1867.

T. C. THEAKER, *Com.*

Certified Copy, No. 8.

The United States Patent Office. To all persons to whom these presents shall come, Greeting:

This is to certify, that the annexed is a true copy from the files of this

office of the file, and contents, in the matter of the Letters Patent granted Wm. Smith, April 5, 1853, extended seven years, reissued June 18, 1867, re-reissued January 14, 1868, No. 2843, for "Impt. in Weaving Corded Fabrics."

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

To the Honorable Commissioner of Patents:

The Petition of William Smith of the City, County and State of New York respectfully represents:

1424 That he did obtain Letters Patent of the United States for Impts. in Weaving, which Letters Patent are dated on the fifth day of April, 1853, and extended on the twenty-eighth day of March, 1867, and reissued on the eighteenth day of June, 1867, that he now believes that the same are not fully operative by reason of a defective specification which defect has arisen from inadvertence or mistake.

He therefore prays that he may be allowed to surrender the same, and requests that new Letters Patent may issue to him for the same invention, for the residue of the period for which the original patent was granted under the amended specification herewith presented, he having paid thirty dollars into the Treasury of the United States, agreeably to the requirements of the acts of Congress in that case made and provided.

Respectfully Yours,

WM. SMITH.

NEW YORK, N. Y., *September* 7, 1867.

CITY, COUNTY AND STATE OF NEW YORK, *ss:*

On this 7th day of September, 1867, before the subscriber, a notary public duly appointed, personally appeared the within named William Smith, and made solemn oath that he verily believes that by reason of an insufficient or defective specification his aforesaid patent is not fully operative and available to him, and the said error has arisen from inadvertence, accident or mistake and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

WM. SMITH.

Sworn before

CHAS. H. SMITH,
Notary Public.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county and State of New York, weaver, have invented, made and applied to use, certain new and useful Improvements in Weaving, and I do hereby declare the following to be a full, clear and exact description of the same, ref-

1425 erence being had to the annexed drawing making part of this specification, wherein

Fig. 1, is the sectional elevation of the loom employed by me.

Fig. 2, is a front view of the lay, and

Fig. 3, is a perspective view illustrating the mode of weaving the fabric that is formed by this loom.

The like marks designate the same parts.

The object of this invention is to produce by weaving, a fabric that has a centre warp enclosed on each side by weft thread held in place by interlaced warps.

The nature of this division of my said invention consists in the process by which the weaving of such fabrics is accomplished. I will, however, first proceed to describe the loom employed.

a, is the frame of the loom of any convenient form, carrying the drawing shaft *b* that is moved by any competant power. *c*, are the connecting rods from cranks on the shaft *b* to the lay *d*, that is supported by, and vibrates on, a rock shaft *l*; *d*, is a warp roller, kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off when at the required tension as now practised. The warp 3 is to be of india rubber strips, if the fabric is to be corrugated and elastic, or this warp may be cotton or any fibrous substance where a thick quality of goods is required.

This warp passes through the stationary heddle 4, and through the reeds *e* in the lay, over the breast beam *f*, the fabric as it is formed being wound by any usual means on the roller *g*.

5, is the warp roller supplying the warp 6 for the two sheds. The warp passes through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3, and filling as hereafter shown.

The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend, as the other descends. In the drawings these are shown as connected by straps 9 over a pulley 10, the straps 11 and 12 being connected from the under side to treadles, to be worked by cams from an auxiliary shaft, or by the feet in the usual manner when power is not used.

The lay itself in front of the reeds *e*, is shown as formed to receive two shuttles having a centre piece 13, with a rib on each edge, an upper piece 14, and a lower piece 15, all attached to the body of the lay,
1426 so as to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle, and the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged.

The shuttles are propelled by means of a frame *k*, with projections depending from the same to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame *l*, and projections. Fig. 1 shows a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys. so that one travels one way, while the other travels in the opposite direction, and by an ordinary picking motion, if in a power loom, or the usual strap for a hand loom applied to move either frame, the shuttles are thrown in opposite directions, through the sheds above and below the warp 3. This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time.

Instead of the frames *k* and *l*, racks may be used that in their motion rotate pinion wheels, fixed on the lay, that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed even if the motion be not sudden enough to throw the shuttle. Or both shuttles may be thrown through the sheds in the same direction at the same time.

The two shuttles carry bobbins with filling as usual, and the loom in

working forms a fabric as shown in large size in figure 3, the warps 6 passing up and down through the stationary centre warp 3, the filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h*, forms a fabric on the under side.

Thus the warp 3 is enclosed, and, in weaving india rubber elastic goods, my loom and mode of weaving are especially useful, and have advantages over other looms for the following reasons, which reasons apply, to a certain extent to the weaving of other fabrics than india rubber.

1st. When a warp of india rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warps and filling interlacing on each side of the rubber cord and forming a woven pocket for the said cord. In this mode of weaving the fabric has ribs produced on its surface, caused by the india rub-
1427 ber in raising or lowering imbedding itself, leaving the india rubber thread loose within the woven covering, which is raised on each side; but by my arrangement, the india rubber being stationary, but a slight rib is formed on the surface of the goods, and the rubber is held tightly by the warps and is not liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber.

2nd. Where two shuttles have been used with different or the same kinds of filling, one has passed through the shed and then the india rubber raised up to let the second shuttle pass beneath it. This produces the same imperfections in the goods that are manufactured.

3rd. With both the foregoing old methods for weaving elastic goods the india rubber being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the india rubber warp; whereas in my loom the rubber remaining stationary, is not subject to as much wear.

4th. Where but one shuttle is used in weaving elastic fabrics, an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

What I claim and desire to secure by Letters Patent is the process herein specified, of weaving, consisting in the use of stationary warps in combination with moving warps and filling that enclose such stationary warps substantially as set forth.

In witness whereof I have hereunto set my signature this seventh day of September A. D. 1867.

Witnesses,
CHAS. H. SMITH,
GEO. T. PINCKNEY.

[Endorsement.] "A." Dated September 7, 1867. William Smith. Imp't in Weaving.

1428 Reissue of patent dated April 5th, 1853. Extended March 28th, 1867, and Reissued June 18, 1867.

NEW YORK, *Sept.* 7, 1867.

SIR:—I hereby appoint Lemuel W. Serrell, New York, my agent and attorney, in relation to my application for a re-issue, in three divisions, A, B and C of Letters Patent granted to me April 5, 1853; extended

March 28, 1867, and reissued June 18, 1867, for Impt. in weaving, and authorize him, or his substitute, to do whatever may be necessary in the premises, as fully and entirely as I could do if personally present, and to receive the reissued patent when granted.

Respectfully yours,

WM. SMITH.

Hon. T. C. THEAKER,
Commissioner of Patents.

OFFICE FOR PATENTS, 119 AND 121 NASSAU STREET,
New York, Sept. 7, 1867.

SIR:—Herewith you will receive the petitions, oaths, specifications, drawings, old patent, and certificates for ninety dollars, as the fees payable thereon, constituting the application of William Smith for a reissue in three divisions, A, B and C of Letters Patent granted him April 5, 1853; Extended March 28, 1867, and reissued June 18, 1867, for Impt. in Weaving.

The correspondence on this case, and also the Patent, when granted you will please address to my care.

Respectfully yours,

LEMUEL W. SERRELL, AND
C. H. SMITH.

Hon. T. C. THEAKER,
Commissioner of Patents.

1429 NEW YORK, *Oct.* 2, 1867.

SIR,—In the matter of Reissue in three divisions of William Smith's patent on Imp. in Looms, the present is to call the attention of your Honor to a conversation in which it was mentioned that this case was one of hardship to the inventor, he having been robbed out of the first term of the patent and this application being made in the extended term, and to renew my request that the Examiner be requested to act upon this reissue so that no delay should arise in the granting of the same so soon as the thirty days from the filing expires. As this time will be up 10th inst. it is hoped that the cases may be so advanced in the examination by that time, as to be granted under date of 22nd inst. at furthest, if there is no opposition; and in view of suits, extension and former reissue examinations, we believe no valid objection can be raised to the present reissue.

Respectfully yours,

LEMUEL W. SERRELL,
Attorney for William Smith.

Hon. T. C. THEAKER,
Commissioner of Patents.

NEW YORK, *Oct.* 19, 1867.

SIR,—You will please consider Messrs. Weidershein & Co., of Washington associated with myself in the reissue cases of Wm. Smith on Imps. in looms, etc., and entitled to act in behalf of the inventor and myself.

LEMUEL W. SERRELL.
Attorney for Wm. Smith.

Hon. T. C. THEAKER,
Com'r of Patents.

Reissue.—Div. A. No. 2843. William Smith, of New York, county of New York, State of New York. Weaving Corded Fabrics.

Rec'd Sept. 10, 1867.
Petition—Affidavit—Specification—1 drawing—Old patent—1 Cert. Dep. $30—Cash.
1430 Examined G. W. Gregory, Dec. 26, 1867.
2 Issue A. M. Stout Jan. 3, '68.
3 Patented April 5, 1853, Extended 7 years.
Reissued June 18, 1867.
Re-issued Jan. 14, 1868.

L. W. SERRELL,
New York, N. Y.

Certified Copy, No. 9.

The United States Patent Office. To all persons to whom these presents shall come, Greeting:

This is to certify, that the annexed is a true copy from the files of this office, of the file and contents in the matter of the reissued Letters Patent granted William Smith, dated April 5, 1853, extended seven years, reissued June 18, 1867, re-reissued June 30, 1868. No. 3,014.

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

To the Honorable Commissioner of Patents,

The Petition of William Smith of the city, county and State of New York. Respectfully Represents,

That he did obtain Letters Patent of the United States for Impts. in Weaving, which Letters Patent are dated on the fifth day of April, 1853, and extended on the twenty-eighth day of March, 1867, and reissued on the eighteenth day of June, 1867; that he now believes that the same are not fully operative by reason of a defective specification which defect has arisen from inadvertence or mistake. He therefore prays that he may be allowed to surrender the same, and requests that new
1431 Letters Patent may issue to him for the same invention for the residue of the period for which the original patent was granted, under the amended specification herewith presented, he having paid Thirty Dollars into the Treasury of the United States, agreeably to the requirements of the acts of Congress in that case made and provided.

Respectfully yours,

WM. SMITH.

NEW YORK, *September* 7, 1867.

CITY, COUNTY AND STATE OF NEW YORK. *ss.*

On this seventh day of September 1867, before the subscriber a Notary Public, duly appointed, personally appear'd the within named William Smith and made solemn oath that he verily believes that, by reason of an insufficient or defective specification, his aforesaid patent is not fully operative and available to him, and the said error has arisen

from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

WM. SMITH.

Sworn before

CHAS. H. SMITH.
Notary Public.

To all to whom these presents may come.

Be it known that I, William Smith, of the City, County and State of New York, weaver, have invented, made, and applied to use a certain new and useful improvement in woven fabrics, and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the annexed drawing making part of this specification wherein

Fig. 1. is a sectional elevation of the loom employed by me.

Fig. 2. is a front view of the lay.

Fig. 3. is a perspective view illustrating the mode of weaving the said fabric.

The like marks designate the same parts.

1432 The object of this invention is to produce a fabric that has centre warp enclosed [on each side]—erase foregoing word enclosed in brackets and insert amendment F. filed May 16, 1868, following in brackets [above and below] by weft threads held in place by interlaced warps.

The nature of this division of my said invention consists in an improvement in the woven fabric itself possessing that character. I will, however, proceed to describe the loom employed, and then point out the features which distinguish my said fabrics fr m others before made.

a is the frame of the loom of any convenient form carrying the driving shaft *b* that is moved by any competent power. *c* are the connecting rods from cranks on the shaft *b*, to the lay *d*, that is supported by and vibrates on a sock shaft 1. 2 is a warp roller or its equivalent, kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off when at the required tension as now practised. The warp 3 is to be of india-rubber strips, if the fabric is to be corrugated and elastic, or this warp may be cotton or any fibrous substance where a thick quality of goods is required.

This warp passes through the stationary heddle 4, and through the reeds *e* in the lay, over the breast beam *f*, the fabric as it is formed being wound by any usual means on the roller *g*. 5 is the warp roller supplying the warp 6, for the [two]—erase A, filed May 16, 1848—sheds. The warp passes through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling as hereafter shown.

The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends. In the drawing these are shown as connected by straps 9 over a pulley 10, the straps 11 and 12 being connected from the under side to treadles, to be worked by cams from an auxiliary shaft, or by the feet in the usual manner when power is not used.

The lay itself in front of the reeds *e* is shown as formed to receive two shuttles having a centre piece 13 with a rib on each edge, an upper piece 14, and a lower piece 15, all attached to the body of the lay, so as to receive and sustain the shuttles *h* and *i*, by the ribs taking grooves in the top and bottom of the back edge of the shuttle, and the length of the shuttle being greater than the width of the reeds, one end enters the

groove before the opposite end is disengaged. The shuttles are
1433 propelled by means of a frame *k*, with projections depending from the same, to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame *l* and projections.

Figure 1 shews a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys so that one travels one way, while the other travels in the opposite direction, and by an ordinary picking motion, if in a power loom, or the usual strap for a hand loom, applied to move either frame, the shuttles are thrown in opposite directions through the sheds above and below the warp 3. This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time.

Instead of the frames *k* and *l*, racks may be used that in their motion rotate pinion wheels fixed on the lay that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed even if the motion be not sudden enough to throw the shuttle. Or both shuttles may be thrown through the sheds, in the same direction, at the same time.

[The two shuttles carry bobbins with filling as usual, and the loom in working forms a fabric as shown in large size in Fig. 3; the warps 6, passing up and down through the stationary centre warp 3, the filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the under side. Thus the warp 3 is enclosed, and in weaving india]—Erase words in brackets and insert A[1], filed May 16, 1865—rubber elastic goods, my loom and mode of weaving are especially useful, and have advantages over other looms, for the following reasons, which reasons apply to a certain extent to the weaving of other fabrics than india rubber.

[1st]—Erase part in brackets, B filed May 16, 1868—When a warp of india rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warps and filling [interlacing on each side of the rubber cord, and forming a woven pocket for the said cord]—Erase words in brackets and insert B, filed May 16, 1868—In this mode of weaving the fabric has ribs produced on
1434 its surface, caused by the india rubber in raising or lowering, imbedding itself, leaving the india rubber thread loose within the woven covering, which is raised on each side; but by my arrangement, the india rubber being stationary, but a slight rib is formed on the surface of the goods and the rubber is [held tightly by the warps]—Erase foregoing words enclosed in brackets and insert amendment C, filed May 16, 1868, following in brackets—[compressed by the wefts] and is no liable to draw into the fabric at its ends, when said fabric is cut crosswise of the rubber.

2d. [Where two shuttles have been used with different or the same kinds of filing one has passed through the shed, and then the india rubber raised up to let the second shuttle pass beneath it. This produces the same imperfections in the goods that are manufactured.

3d. With both the foregoing old methods for weaving elastic goods, the india rubber being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the india rubber warp; whereas in my loom the rubber, remaining stationary, is not subject to as much wear.

4th. Where but one shuttle is used in weaving elastic fabrics an expense is incurred which can be saved by my loom, as these fabrics are

usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.]—Erase foregoing words in brackets, and insert D, filed May 16, 1868.

[What I claim and desire to secure by letters patent, is the fabric specified, the same being formed with centre warps, enclosed by the weft threads that are held upon the surface of the centre warps by the interlocking of the movable warps between the centre warps, thereby causing the weft threads to be pressed [tightly]—Erase word in brackets amendment—E, filed May 16, 1868—upon the centre warp.]—Erase words in brackets, see amendment G, filed May 16, 1868.

In witness whereof I have hereunto set my signature this seventh day of September, A. D. 1887.

W'M SMITH.

Witnesses:
CHA'S H. SMITH.
GEO. T. PINCKNEY.

1435 (Endorsement:) "B." Dated September 7, 1867. William Smith. imp't in woven fabrics. Reissue of patent dated April 5th, 1853. Extended March 28, 1867, and reissued June 18, 1867.

To the Commissioner of Patents:

SIR: We respectfully request that action may be delayed ten days from date upon Division B of William Smith's application for second reissue of his patent of April 5th, 1853, for Weaving Corded Fabrics, to allow us time to file samples of goods made on different looms for the inspection of the office, in support of which request we make the following statement:

The fact of M'r Smith's application did not come to our notice until the 25th of September, and as the parties whose interest we represent live at a distance, some time has been consumed in correspondence, moreover the necessity of furnishing specimens for the inspection of the office in order to show the perfect similarity between the common fabric and the fabric sought to be patented was not fully comprehended by us until within a few days when immediate steps were taken to obtain these specimens. In view of these facts we make the above request.

Respectfully,

BROWN & BEADLE.

Personally appeared before me the subscriber, a notary public, W. W. Beadle, of the firm of Brown & Beadle, and made solemn oath that the above facts are true.

EDM. F. BROWN,
Notary Public.

The Examiner will delay action for ten days as requested.

A. M. STOUT,
Ch. Clerk.

1436 U. S. PATENT OFFICE, *Oct.* 21, 1867.

GENTS: In the matter of the reissue of W'm Smith's patent granted April 5, 1853, and which has been extended and reissued, it is decided that the thirty days for opposition commences from the date of publication of claims, instead of from date of filing of the application

in this office. The claims were published in the Scientific American bearing date Oct. 5, 1867, but in reality published Sept. 25, 1867. The application will be considered as open for opposition until Oct. 25, 1867.

GEO. GREGORY,
Examiner, Room 7.

Mess'rs BROWN & BEADLE, *Present.*

U. S. PATENT OFFICE, *Oct.* 21, 1867.

SIR: In the matter of your application for reissue of your patent for improvements in weaving corded fabrics granted April 5, 1853, which has been extended and reissued, it is decided that the thirty days for opposition commences from the date of the publication of the claims, instead of from the date of the filing of the application in this office. The claims were published in the Scientific American, bearing date Oct. 5, but in reality published Sept. 25, 1867. The application will be considered as open for application until Oct. 25, 1867.

J. W. GREGORY,
Examiner, Room 7.

WILLIAM SMITH (Weidersheiu & Co.), *Present.*

Affidavit of Caleb Holt.

In the matter of reissue of W'm Smith's patent on looms and elastic fabrics.

CITY AND COUNTY AND STATE OF NEW YORK, *ss:*

CALEB HOLT, being duly sworn, deposeth and says that he is a merchant, doing business at 119 Chambers street, in the city of New York; that he has been in business for more than twenty-one years, and
1437 that his knowledge of elastic fabrics extends over a period of twenty-one years, and has been acquainted with woven elastic fabrics for suspenders since 1846, when he first saw them in the market for sale; that said elastic suspenders were made and woven according to the sample No. 1, attached to this affidavit, being the same as a majority of suspenders are being made and woven to this day, and that the sample No. 4, attached hereunto, made pursuant to Smith's patent, has not been in the market until a later period; that during the above period and now he is a dealer in elastic fabrics.

That he knows that elastic fabrics when first produced were not adapted for use for gores of boots and shoes, because the elastic was not held by the weft threads and firmly interwoven between the elastic cords; but such elastic cords were between woven surfaces tied together by intervening locking warps, there being warps interlaced with the weft threads upon the surfaces of the elastic cords themselves.

That he knows of the improvement in elastic fabrics made by William Smith in which the elastic cords are held only by the weft threads upon their surfaces, firmly compressed upon such elastic cords by the intermediate interwoven warps according to the plan of samples No. 2, 3, and 4, attached hereto, made by and under William Smith's patent.

That M'r Smith, in dispensing with warps running on each side of the elastic cords, has effected a great improvement in the fabric itself, because its elasticity is increased and the elastic cord is more firmly held therein than in the goods made before his invention.

And deponent further says that he can readily distinguish the goods

made on the Smith's plan from those previously made on account of said peculiarities.

CALEB HOLT.

Sworn to before me this 26th day of October, A. D. 1867.

CHARLES H. SMITH,
Notary Public.

1438 Reissue of W'm Smith's patent, imp't in looms and elastic fabrics.

NEW YORK, *Oct.*, 26, 1867.

SIR: In presenting the accompanying affidavits, permit me to call the attention of your honor to the following statements:

1st. It appears from a copy had from your office that an argument had been filed in opposition to this case without any signature and only the names of certain patent agents endorsed upon it. What are we to conclude? that the real parties opposing had some underhand object in keeping out of sight; that the opposition is not a square, manly protest with grounds to stand upon, but a lengthy ex parte argument that in any court of justice would have no more weight that the statement of a maniac. Permit me to express the hope that the ruling of the Patent Office in these early stages of reissue opposition will be such that all such proceeding will be prevented in future.

2nd. The argument in question, when removed of its mass of chaff, may be summed up as follows:

(A.) That the fabric cannot be distinguished from other previously known fabrics.

(B.) That if the fabric derives its novelty from the loom in which it is made, and has no intrinsic qualities, a claim cannot be made on the fabric.

(C.) That Smith in his model and drawings originally did not show the fabric.

(D.) That a claim might be allowed to the applicant which would be folly in its wording, useless in its character, and a discredit to any person allowing or taking such a grant.

As to the point B, we say amen. As to the points A and C, we say they are utterly without foundation. The point C is refuted by the drawing in the original patent, and I know that samples were originally sent.

The question only arises as to the point A. On this we send three affidavits that are more full and to the point than any argument can possibly be. It is unnecessary to repeat the statements; suffice it to say that the present fabric can be distinguished by any person from the fabrics before produced.

1439 The patent of Heywood has no bearing upon the present case, as was fully understood on the former reissue.

It is my intention to visit your office on Wednesday next, and as the time for affidavits was extended to Monday, pursuant to M'r Smith's request,

I have now to say that if there is any point requiring attention, I shall feel obliged by a delay in action until Wednesday, 30th, that it may be attended to and settled there.

Respectfully, yours,

LEMUEL W. SERRELL,
Attorney for W'm Smith.

Hon. T. C. THEAKER.

Affidavit of William Smith.

In the matter of the reissue of William Smith's patent in looms and elastic fabrics.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

WILLIAM SMITH, being duly sworn, deposeth and says that he is a naturalized citizen of the United States; that he was born in England in 1805, and emigrated to this country early in the spring of 1845; that in England he was a maker of dress trimmings and upholstery goods, tapes, silk, small wares, etc.

That he was an inventor of fabrics and machinery there, and was well conversant with all kinds of machinery for weaving from a potato bag to a damask shawl.

That at the time he left England elastic goods were not made with India rubber (except a few suspenders that were made by cutting threads from bottles of native rubber by a pair of scissors), and elastic suspenders did not come into general use until years afterwards. Elastic garters were made with spiral springs inserted and cemented between two pieces of cloth, and that gores for boots and shoes did not come into use until years after he came to this country.

And the said Smith further says that he is the first inventor of the fabric described in the division B of said reissue. That said deponent set up the claim for the said fabric in his patent of April 5th,
1440 1853, and this deponent always believed and supposed that his claim was good for the fabric and when he took the reissue of June 28th, 1867, was informed and believed that the process covered the fabric.

And this deponent further says that he is not only the first inventor of said fabric, but the first that introduced the elastic webbing into public use, made according to his new invention.

And this deponent further says that his said invention is new and superior to all other fabrics for the following reasons:

First. That by the old method of weaving corded and elastic fabrics the warp threads run parallel with and on both sides of the elastic threads as well as between them, and as these threads had to pass through the heddles and reeds to withstand the friction caused thereby they had always to be doubled and twisted threads, which being so doubled and twisted would take three times the amount of material to form the fabric than by deponent's method; by referring to sample Exhibit No 1, which is made by the old method, it will be seen that the rubber thread lies in a pocket, and there are two threads interlaced between the cords to bind the two surfaces together and when the fabric is cut cross-wise to the rubber threads the ends of the rubber draws into the goods for want of the rubber being held tightly in the goods; this fabric is utterly useless for elastic gores for boots and shoes.

By deponent's method, by dispensing with the warp threads that form the pocket (see sample Exhibit 1), and at the same time increasing the number of the interlacing threads between the center warp (see sample Exhibit 2), when the woof passes across the fabric the interlacing threads hold the weft threads closely to and tightly upon the center or elastic warp.

Second. Deponent further says that by the method of producing said fabric and dispensing with the use of all warp threads but the interlacing warp threads between the threads of the center warp and using

cotton threads for the interlacing warp threads he can use woof of silk very lightly twisted that will spread on the surface of the rubber with about one-third or one-fourth the quantity of silk than by any other method, saving the principal part of the cost of making the goods, because the weft threads are sufficiently strong without being doubled and twisted, and had it not been for the discovery of this depo-
1440½ nent the said fabric would not have been in general use as the cost would have been treble what it now is, there being now several millions of yards used yearly of said goods.

Third. That deponent's fabric is easily distinguished by the close interlacing of the threads between the center warp, the cord looks finer and sharper, the interlacing threads appear lower between the center warp threads, causing the silk weft to appear most prominent to the eye except when the woof of the fabric is of the same or coarser material than the interlacing warp threads, then the surface appears more flat and even; yet when such is the case, the rich appearance of the center warp is not one-half the breadth that it would be otherwise. (See Exhibits No. 1 and 4.)

Fourth. The fabric of deponent is the only woven fabric that can be used for gores for boots and shoes for this and similar reasons, elastics for that purpose must stretch from three to five times its length. By examining Exhibit No. 1, you will perceive that the warp threads covering the rubber threads check and hold the elasticity and prevents the property of the rubber giving out, nor could any plan be arranged by the old manner of making the fabric to remedy that defect, as the said warp threads would be so loose in the goods when said goods would be unstretched the said warp threads would lie in ridges or corrugations on the surface of the goods.

Fifth. There is another characteristic in deponent's fabric when the center warp is of elastic materials; when the goods are pulled out the full expansion of their elasticity, the elastic threads appear naked and bare between the weft threads (see Exhibit' No. 1 and 4), which show the difference between the old and new, the goods in both being of the same material and will exhibit the distinguishing features of the old method at a glance.

Sixth. Deponent further says that by his patent the fabric can be made on both sides at one and the same time of the same material or one side of cotton and the other of silk or any other fibrous material, taking but half the time to make the goods as the old plan. (See Exhibit No. 3.)

In Europe, after deponent's goods were made here, there were goods made in which part of the covering warps for the rubber on the surface of the goods were dispensed with according to deponent's pat-
1440½ ent and a cotton warp was used on the back, being interlaced on the back by the weft only; by this method there was as much silk used on the back of the goods as on the front, but not appearing in sight as on the surface of deponent's goods by having a weft thread of cotton and another of silk and throwing the cotton weft at right angles with the center warp; deponent has a cotton back with silk only on its surface. (See Exhibit 3.)

And this deponent further says that his opponents do not oppose him in an open, manly manner; that there is a ring formed in New York against him and a "pool" made, many thousand dollars collected to oppose him; and deponent, from information and belief, says that his opponents go about from one merchant to another to get them to join in the "ring" and said merchants say that they believe said Smith

has a right, they answer and say, that does not matter, we can out money him; and that the said ring was got up by Joseph S. Lovering and some remnants of the Elastic Fabric Company, and they employ the old lawyers and counsellors of said company, Dickerson, and Brady.

That deponent has a reason to believe that the unsigned argument that has been entered in this case has come from the same source as the underhanded opposition that he has heretofore met with; that an instance of the same may be seen by two fraudulent assignments on record in the Patent Office and one dated 7 of May, 1856, recorded in March, 1862, the other dated May 20, 1856, and recorded May 23, 1856; both of these have been proved in evidence without contradiction to be fraudulent.

And deponent further says, at the time when such fraudulent assignments were discovered, he wrote several letters to the then Commissioner of Patents (Holloway), some of them were registered, but could not receive any answer from any of them, until said deponent was tired of writing about it, and this deponent verily believes that said Commissioner never received such letters, and this deponent says, at that time it was a common saying in New York that the Patent Office belonged to the Elastic Fabric Company.

And this deponents would respectfully refer to affidavits on file, to the deposition of Joseph S. Lovering, to the large quantity of machinery that is worked by his company pursuant to his patent, also to his own affidavit that he knows of over half a million dollars' worth
1441 of machinery worked or that can be worked at any time, made pursuant according to his patent, and that the said Joseph S. Lovering is infringing deponent's patent every day (Sunday excepted), and his chief object of getting up a pool appears to be to fight his own battle with other people's money.

And this deponent further says that one M'r Hall, from London (the same referred to in affidavit of John Reade in the last reissue), in the year 1850 doing business on Broadway, N. Y., absconded and returned to London, and at the time of his going away he procured from this deponent one hundred yards of elastic webbing on credit, and in three days afterwards he absconded, and this deponent verily believes he took a portion or sample of them to England, and that was the way the invention of deponent was patented there; this testimony can be proved by many parties and does not rest on this deponent's testimony alone.

There has been much said about the patent of Heywood of 1850 (misquoted 1849); this patent has no reference to my patent; he makes use of the word standing warp, for want of a better, when in fact it is not so, but is interlocked by a regular lock-stitch, the same in fact as made in musquito netting, the warp-threads remaining on the surface of the goods, see Fig. 2, Plate A.

That deponent sent samples of his fabric with his original application, and also a loom-model that was capable of practical use, and had a sample of goods in the same and also had it shown in the drawing, thereby fully setting forth the peculiarity of the fabric in question.

WILLIAM SMITH.

Sworn to before me this 26th day of Oct., 1867.

CHARLLS H. SMITH,
Notary Public.

NEW YORK, *Nov.* 4, 1867.

SIR: Please inform me by return mail whether there is any opposi-

tion entered to the reissue of W'm Smith's patent for imp. in looms, etc., under which any person is legally entitled to a notice of the time and place of taking any testimony, and oblige the applicant.

Respectfully, yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER,
Com'r of Patents.

1442

U. S. PATENT OFFICE,
Washington, D. C., Nov. 16, 1867.

WILLIAM SMITH, L. W. Servell, N. Y.

Please find below a communication from the Examiner having charge of the application of Wm. Smith, for re-issue of his patent for Improvement in Weaving Corded Fabrics.

Very respectfully,

Commissioner.

EXAMINER'S ROOM NO. 7.

In the matter above referred to, it is decided that the parties opposing the re-issue Div. B, are entitled to notice of taking testimony referring to that division of the re-issue.

G. W. GREGORY,
Examiner.

NEW YORK, *Nov.* 29, 1867.

SIR: In the matter of division B of Wm. Smith's reissue of Loom patent April 5, 1853 extended, the applicant feels aggrieved by the official ruling, and for the following reasons it appears that he has good grounds therefor.

1st. Sept. 10, the application was filed and in the published notice 30 days therefrom was named as time for opposition.

2nd. Oct. 18th, any opposition was ruled out by Commissioner, Mr. Smith and my Correspondent, Mr. Weidersheim, being present.

3rd. Oct. 21, we are informed that opposition can be received up to Oct. 25. the ruling being 30 days from actual publication on Sept. 25.

4th. Brown & Beadle leave in the Patent Office an argument without date of filing, and without signature, they have not the manliness to say for whom they are acting nor to desire to be parties to the opposition; Oct. 25th, the Examiner decided that they were not parties to an opposition and so informed Weidersheim.

5th. On 14th inst. I wrote enquiring whether there were any parties, legally recognized as opponents, and entitled to notice.

6th. Not hearing from your office for ten days Mr. Smith pro-
1443 ceeded at considerable cost and trouble to obtain the accompanying affidavits of W. J. Uhlinger and Wm. V. Gee—and they were completed and sworn to on 18th ins.

7th. Nov. 18th, I received the official letter of 16th inst. saying that opposing parties are entitled to notice; I immediately send word to Mr. Smith at Philadelphia, and my letter crosses him as he is returning with these affidavits.

From these statements your Honor will see that we have never been informed either officially or by any opponents that there was any opposition and this day we do not know who the opponents are or where to serve a notice in them; and hence we cannot recognize or have any-

thing to do with an opposition and consider that the effort of the Patent Office to require a notice to be served on a myth is without precedent and can never command serious consideration.

Again, with all due respect to the official actions, I remark that they must be consistent in order to command respect or else the tone and standing of your department will sink like that of some petty court, and its actions be laughed at instead of upheld. By the recital of facts in the foregoing your Honor will see that on two occasions no opposition was recognised, and on a last occasion an opposition is recognised. Again, that Oct. 10 is decided to be the last date of opposition, then Oct. 25, and to this present date the reissues are advertised to court opposition for thirty days from the day of filing, not from the day of publication. Which ruling is correct? which shall be followed? how shall agents advise their clients, and how shall the official rules be lived up to, are questions that cannot be answered by any one until the official actions are made consistent with themselves.

In view of the foregoing facts I have advised, and my view is sustained by eminent legal authority, that this case be presented to your Honor on its merits, regardless of any opposition real or mythical, and that actual opponents be met face to face in open court where this patent will be doubtless speedily reviewed.

Permit me to call attention to a separate argument on the merits of this case.

Respectfully yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER,
Commissioner of Patents.

1444 In the matter of Reissue William Smiths, patent of April 5th, 1853, on Looms, etc.—Division B.

NEW YORK, *Nov.* 29, 1867.

SIR: The attention of your Honor is called to a separate communication concerning the ruling of your office on the question of opposition. In this I propose to direct attention to the question of novelty in the division B of this reissue.

In all elastic goods the point of contraction is determined by the weft threads coming closely together side by side, and the point to which the goods can be distended is limited by the warp threads coming nearly into a straight line; in the goods made before the applicant's invention the woven fabric forming the pockets for the cords prevented the distension of the rubber beyond the point to which such pockets could be stretched (see Smith Exhibits, No. 1). In my fabric all the warps interlocking between the cords, pass around the weft threads on one side and then around the weft threads on the other side, and hence are necessarily longer than they would be in an ordinary fabric and longer than in the pockets before woven for the rubber, hence the rubber can be stretched much more than was possible with previously made elastic fabrics. Corded non-elastic fabrics were made before my invention, the cord however was introduced as weft, hence the cord was covered by the warps, and in some instances (probably more than the majority of instances) by a fabric woven with warp and weft of nearly the same size forming a pocket for a surface over the cord.

In all these instances the fabric woven between the cords was of a usual character, the warp and weft being crinkled about equally, and interlocking so as to form nothing but a plain or an ordinary twilled surface; in those instances where the warps have been made with cords

interspersed through the ordinary warps, the warps in being split to form the shed had to be divided, about half the cord warps being on each side, or else the superior stiffness of the cord warps would either raise or depress the edge of the woven fabric itself: this led to the interweaving of the cord warps exactly the same as the smaller warps, in other words by their rise and fall they were crinkled and interlocked with the weft threads exactly the same as warps would be that were accidentally larger in places in consequences of imperfections.

1445 Now in my fabric the center warps are not interlocked with the weft threads, they are simply bound and held by the pressure of the weft threads on the center warp threads due to the interlocking of the moving warp threads, and these moving warp threads are necessarily longer than they would be in an ordinary plain fabric, because the weft threads, although actually and perfectly interlocked by the moving warps, are not brought to a point where they rise and fall in the interlocking equally above and below a central plane as in ordinary weaving.

In other words, my fabric, when the cords are non elastic, is identically the same as the elastic fabric in its structure resulting from the interlocking of the threads, and under all circumstances it is a corded fabric possessing the following features, peculiarities, not separately but combined and as a whole going to make up the descriptive and distinguishing characteristics thereof.

1st. My fabric as a whole is a corded fabric, the cords being as close together as consistent with the other features and as nearly uniform in the distance apart as possible. (This is distinguished from woven fabrics with cords occasionally interspersed for ornament or strength.) 2nd. Each weft threads passes right across the fabric, being entirely above or entirely below the cords (as distinguished from weaving in which the cord warps moving with the shed, cause the same shot of weft thread to be above and below the cords of the fabric). 3rd. The interlocking warps playing up and down between the cords only serve to bind the weft threads to the surface of the cords in place (as distinguished from fabrics in which the interlocking of the warp and weft composes on ordinary plain or twilled fabric between the cords, the interlocking of warps and wefts being equal or nearly so above and below a plane running centrally between the two surfaces of the fabric).

4th. The surface of the fabric, above and below the cords themselves, is only composed of weft threads (as distinguished from suspenders woven before my invention with a pocket for cords, composed of both warps filling).

It is confidently asserted that previous to the date of my invention there never was a fabric, either elastic or non-elastic, containing all the four features before enumerated, and although this mode of

1446 weaving is specially adapted to elastic fabrics, and although the elastic fabric itself might be patented (even if such combination of thread as a non-elastic fabric were before known) in view of the utility in the firm holding of the elastic cord, and the increased extent of distention allowed it, still it is believed that the patent should be granted for the fabric without limitation to the cords being elastic.

The specification and claim are concise, but should any modification or amplification be deemed important please advise

Respectfully yours,

LEMUEL W. SERRELL.

Hon. T. C. THEAKER,
Commissioner of Patents.

NEW YORK CITY, *Nov.* 30, 1867.

Hon. T. C. THEAKER, *Comm'r of Patents:*

SIR: I have examined the English patent granted to I. Vincent Desgrand, sealed November 14, 1832, and the French patent to Vacheron, of September, 1832, and in my opinion, neither of them describes a fabric like the one described in W'm Smith's patent, and claimed in one of the divisions of his application for reissue now pending. According to both of the said English and French patents, two fabrics are woven, one above and the other below the India-rubber or other longitudinal cords, and here and there a few of the weaving warp threads are carried from the upper to the lower cloth, and vice versa, to tie the two together and thereby enclose the cords. But in M'r Smith's, there is no woven cloth either above or below the cords; the interlocking of the warps and wefts is effected entirely between the India-rubber or other longitudinal cords and in each of the spaces between them, the said cords being covered by weft threads alone.

By reason of the interweaving of the wefts with the warps between the cords alone, it follows that each cord is firmly griped between the upper and lower wefts, so that none of the cords can be drawn out of the fabric.

The distinction between the fabric described in M'r Smith's original patent, and claimed in his application for reissue, and the two patents alone referred to will be found on examination to be clear and distinct.

I remain, sir, yours respectfully,

CHA'S M. KELLER.

1447 In the matter of the application by William Smith, for reissue of his patent granted 5th April, 1853.

UNITED STATES OF AMERICA,
E. District of Pennsylvania, ss:

William P. Uhlinger, being duly sworn, doth depose and say that he has no interest whatever, direct or indirect, in the aforesaid patent of William Smith. That deponent resides in Philadelphia, where he is proprietor of an extensive manufactory of machinery for weaving, and is expert and well acquainted with the art of weaving in all its branches. That he has carefully examined the specifications and process of said patent of William Smith and also those of the four patents hereinafter mentioned and described in conjunction with William P. Gee, thoroughly compared the same.

And the said William P. Gee, being also duly sworn, deposeth that he is superintendent of Norris Raleigh's suspender and tape weaving manufactory in Philadelphia, and is skilled and expert in all kinds of rubber weaving, and that he has no interest whatever, direct or indirect, in said patent of William Smith, and they both say that following is truly the result of their examination and comparison.

After examining the patent of W'm Smith and the article of manufacture or goods produced thereby, and carefully considering and comparing therewith the patent granted at Paris to Louis Francis Vacheron, No. 3624, on the 14th of September, 1832, we find and declare that they are two separate, distinct, and essentially different processes, and productive of results essentially unlike and different, and distinct the one from the other, and that no such goods as Russia drilling, twills, dimities, velvets, etc., claimed to be the products of the Vacheron process

and patent, could be made under the process patented to said W'm Smith for the following reasons, viz:

That in the Smith's patent there is this distinct feature, that the cloth woven is all between the cords are firmly held in the web by the weft threads, by reasons of the numerous interlockings of the warp threads, forcing the rubber cord to the smallest possible compass in the web.

That by Smith's patent the product is always a corded fabric and cannot be varied to twills, drills, dimity, velvet, etc. Vacheron
1448 says that there are two distinct pieces of cloth in his way of weaving under and above the rubber, and that by covering the entire under and upper surface of the cloth with woven fabric, he could weave twills, drills, dimity, velvets, etc., and in no other way, as is well understood; while the two pieces of cloth are held together by what are well understood as "binding threads," the same as in figured or ornamental weaving when it floats too much, and is held down by binding threads to the ground of the fabric.

Vacheron in his description of his patent describes ideas rather than facts.

On the 2d of December, 1834, he takes out a third addition to his patent, for an improved manner of rolling his native rubber around the beam. It is a well known fact to all who ever used native rubber (at that date vulcanized rubber was not known) that had he rolled his rubber threads on or around the beam as he describes, the rubber threads would all harden and stick together, and would have to be cut through to be removed from the beam.

Vacheron's second addition for improvement to his patent taken out 4th February, 1833, shows conclusively that his process was two complete webs or fabrics; for he describes that he partly braids over the rubber; that is leaves part of the rubber uncovered to give the rubber room to contract. Now when the rubber did so contract the threads or covering so braided would bulge out and lie loose on the rubber, and unless the rubber was covered by a complete web both above and below, the said loose covering would force through the weft threads on the upper and lower surfaces of the fabric and would thus destroy the beauty of appearance and the value of the goods. Now by the process of M'r Smith's patent the rubber is placed in the centre of the interlocking threads in each dent of the reed, which forms of itself, without braiding or any other device, a protection to the rubber itself.

To James Desgrand. Sealed 14th Nov., 1832. *Enrolled May*, 1832, *at London, England.*

This patent is evidently the same as Vacheron took out at Paris one month earlier, viz., 14th September, 1832.

M'r Desgrand (probably a Frenchman as the name imports) probably watching the French publication of patents, with a few utterly
1449 unimportant additions has evidently taken the patent of Vacheron as the basis of his application for the English patent. That he was not a weaver nor an expert in weaving will amply appear on inspection of the mechanical absurdities and impossibilities contained in his theoretical additions to the patent of Vacheron, whom he follows in the management of the rubber and the warps which he says "may be performed in looms of ordinary construction by the ordinary manipulations of weaving other fabrics."

We pass over his specifications of elastic fabric all both warp and welt, where the pressure he describes would cause the fabric to adhere

together in one mass, and in which even if he could have preserved the tubular form, the presure of a full stream of liquid through the hose would have at once destroyed the adhesion of the rubber; the application of grease to the rubber cords to prevent their becoming jagged or roughed in passing through the dents or slits of the reeds, which as every tyro in the working of India rubber knows would dissolve the rubber and at once destroy the fabric; and other inconsistencies in his patent, and come to that portion of it which alone can have any apparent bearing on the subject of this application or the process and fabric claimed in the Smith patent.

Desgrand's claims seem to be for the use of uncovered or bare strands of India rubber and not for weaving. His language is, "So that the fabric produced will be a double tissue with strings . . . . or cords of bare caoutchouc included between the two tissues and tied together and running in the direction of the warp; those two tissues being sufficiently united and tied together by the weft threads to unite them as one, without confining the strings or cords of the caoutchouc."

Now the principle of Smith's patent is the reverse of all this; its purpose being to confine and hold the India rubber strands in their placee by the interlocking of the warp threads between the India rubber cords, so that the India rubber thread is for all practical purposes firmly held and confined in its proper position in the fabric.

Antoine Merten's patent, June 16th, 1842.

This contrivance of Merten's has no analogy to nor any feature in common with Smith's patent. In Merten's plan the India rubber cords are so far apart that the effect of their contracting (to which Mer-
1450 ten applied the word "plaited" in place of "corrugated") is that the contraction cannot carry the body of the fabric along with it in an even manner, so that it would have a smooth and even surface, and it is left puffed up in an irregular manner thus destroying the value of the goods; and this whether the rubber is in the weft or warp. But in Smith's process there can be no corrugating or plaiting as here described as by it the fabric must contract evenly with the rubber; and instead of the elastic cords being never less than one eighth of an inch apart as in Merten's patent in Smith's elastic fabric they are less than one-eighth of an inch apart according to the fabric. To produce the fabric described in Merten's specification the elastic threads are and must be covered by the woven fabric. But no such goods as there described could be produced by the Smith patent or process, for in Smith's process, the India rubber being covered by the weft only, were the India rubber cords introduced into the web or fabric so far apart as to cause the fabric to corrugate or plait, the weft threads that covered the India rubber strands would stand up loose, unsightly tufts on the upper and lower surfaces of the fabric and render it useless and valueless.

William Brown's patent, No. 10105. *Enrolled September 14th,* 1844.

This is the most meaningless patent of any . . . . four submitted to us by the examiner.

What is the patent for? not for weaving, for that he disclaimed; not for looms, for that he disclaims either in plain or ornamental weaving, either in plain or Jacquard looms, neither in India rubber strands, covered or uncovered, either of which he disclaimed.

By carefully reading over his claim, it amounts to this, by introduc-

ing India rubber warp on the back of the fabric and held at intervals by the weft threads; or to enter the India rubber threads a little more into the back of the fabric, but in such a way that the India rubber threads cannot appear on or near the surface of the fabric, but must be entirely concealed by the warp threads; this claim (if it is a claim) in connection with the Jacquard loom must constitute his claim.

(I) I will now consider the effect of fastening the India rubber
1450½ threads on the back part of the fabric, when the India rubber threads contracted it would draw the fabric into unsightly shapes thus:

(Cut.)

The dotted lines are the fastenings of the weft, of the India rubber threads.

(II.) His second method of interweaving the India rubber threads a little more into the back part of the fabric, would have the same effect as the first method, but in a less degree; these methods here described would render the fabrics unsightly, destroy their beauty, and greatly injure their value. Another method the patentee describes of weaving in and interlocking the India rubber warp threads; which would alternately cause the India rubber warp threads to lie or appear on the upper and under surfaces of the fabric, the same as the non-elastic warp threads thus:

(Cut.)

The effect of this mode of weaving in the India rubber warp threads would be, that the India rubber threads from the upper and lower surfaces of the fabric, would contract towards the centre of the fabric; and what the patentee wanted to accomplish or did accomplish, by weaving in the India rubber, it is impossible to say.

The patentee next describes making stripes in the fabric one part elastic and the other part non-elastic. This is impossible; for if one part of the fabric is elastic, it must have sufficient strength to carry along the non elastic part of the fabric which would appear corrugated or plaited; but if the India rubber threads had not such strength as the aforesaid, the non-elastic parts would appear as if no India rubber thread was in any part of the fabric and the India rubber would not contract in the fabric.

The patentee describes in his patent what the other three patentees, previously considered, fail to do, to wit, to produce satin twills, etc., both in the ground as well as in the figure; that is to say, to produce satin, twills, drills, etc., both in the grounds as well as in the figure, the usual amount of fibrous threads of silk, etc., must be used to form the fabric as if no India rubber were used.

That is that there must be the same amount of fibrous material in the warp threads exclusive of India rubber to make satin twills,
1450½ drills, or any well known fabrics; and the India rubber when introduced forms no part of making satin twills, drills, etc.

But in Smith's patent the centre warp is the main part of the fabric, confined and held in their place by the interlocking of the non-elastic warps, between the threads of the centre warps—india-rubber as weft; that none of the above patents ever came into use, many of the descriptions therein, it was impossible to make, and, even if they were made, they would spoil the fabric and render it useless.

We will now consider the india-rubber introduced into the fabric as weft either close or wide apart. The fabric must contract in breadth and not in length, and suppose you wanted to make suspenders of such a fabric; say twenty inches in length, you would have to make your fabric twenty inches wide when contracted, and you would have to make different fabrics of different breadths for all your different lengths of su'penders, or you would suffer a waste of fabric of as many inches as the suspenders varied in length; and further say, that if you wanted your suspenders one and one-quarter inches wide, you would have to cut your fabric into stripes one and one-quarter inches wide, and there being no selvage to the strips, the india-rubber thread would come out of the fabric, and the goods would look ridiculous and almost worthless.

So must it be with all fabrics, with india-rubber weft threads, as the elasticity comes in the breadth and not in the length, quite the reverse way that it is ever wanted, and never has, or ever will be of any utility, as a weft thread. We will next consider the effect of elasticity part in the weft and part in the warp, in making stripes. I have before observed that when the india-rubber is introduced as warp threads, when the india-rubber contracts, it must carry that part of the, that has no india-rubber introduced in the same plane along with it or it could not contract. For illustration I will use the following figure:

(Cut.)

Now, I say that the india rubber in the warp lies in a plane from N to S, and the india-rubber weft thread lies in a plane from E to W, now these two forces act on different planes in opposite directions, would counteract each other, if the contraction was strongest from N to S it would fill up the plane from E to W so that the india-rubber on the plane from E to W could not contract or in a very imperfect way;
1451 and vice versa; or if the two forces were equal, what the one gained in contraction, the other would lose; so that under the most favorable circumstances the two forces combined could never be more than either one separately.

Of what use or utility they ever could be, we do not know, as such fabrics have never been known in the market; but if they had been in the market, and had been of utility, they have no connection with the manner or make, or construction of Smith's patent.

W. T. ULINGER.
W. V. GEE.

Sworn to and subscribed before me this eighteenth day of November, A. D. 1867, by each of the above affiants.

[SEAL.] W. GRIER HIBLER,
U. S. Commissioner.

U. S. PATENT OFFICE,
Washington, D. C., Dec. 7, 1867.

WILLIAM SMITH, (L. W. Serrell, New York, N. Y.):

Please find below a communication from the examiner having charge of div. B, of the application of W. Smith for reissue of his patent for improvements in weaving, dated April 5, 1853, and afterwards extended and reissued.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

In the matter above referred to the office is in receipt of affidavits, arguments, etc., filed Dec. 2, 1867. This application for reissue was filed Sept. 10, 1867, and it was then understood that reissue applications were to be suspended for opposition for thirty days from date of filing, but it was afterwards discovered that should there be delay in publishing the claims the public, for whose benefit these applications were suspended, would be deprived of exactly the number of days for opposition intervening the filing and publication. This question was first officially considered in connection with this application, and it was ruled by the office that all reissue applications should be suspended for
1452 opposition for thirty days from the publication of their claims.

The examiner immediately notified applicants of this decision of the office, gave the 25th of Sept. as the first date of publication of claim in the Scientific American, and that opposition filed up to Oct. 25, 1867, would be considered. An argument or statement was filed in examiner's room Oct. 16, and endorsed by him in pencil, alleging that the fabric sought to be patented in this division of the reissue was not a new fabric, and that any loom for weaving plain cloth, if provided with elastic and non-elastic warps and filling and worked in the usual way, would produce this fabric. This statement has not at bottom a signature, but on its back is the following endorsement: Brown & Beadle, solicitors, etc., of patents, Washington, D. C. Brown & Beadle afterwards filed samples of fabric, with affidavit, showing that like fabrics would be produced with movable elastic warps as with stationary elastic warps. The gist of this invention is holding the elastic warps in place by weft thread only in contact with the elastic warps at top and bottom; the specification however does not limit the fabric to one produced with an elastic warp, as it says the warps may all be non elastic. The point of the case is, therefore, holding warps of a given size in place by weft only.

It was held by the examiner, on personal interview with applicant's attorney, and it is yet held, that a fabric like applicant's would be produced by uniting with filling a chain of warp composed of separate elastic and non-elastic warp threads, moved after the method of moving warps for plain weaving. Holding this opinion, applicant's attorney was referred verbally to a French patent and to the following English patents: Desgrand 6334, year 1832. Siever 6366, year 1833. Morton 9186, year 1841, and Brown 10105, year 1844. And he was requested to furnish the office, there being a difference of opinion, with evidence that from the descriptions in these English patents in particular, a fabric could not be produced first with warps, and secondly with elastic warps, held in place only by weft thread at top and bottom. The affidavits do not come squarely to this sole point at issue, but go to show that the entire fabrics are not precisely Smith's fabric.

It must be remembered that neither the quantity of elastic or non-elastic warps nor their relative distances apart enter into the merits of this case, as the warps may all be non-elastic; it is the method of
1453 covering warps at bottom and top that is at issue. There is a letter from applicant's attorney, dated Nov. 4, and received in examiner's room Nov. 15, asking if any persons are entitled to notice of taking testimony. This letter was answered Nov. 16, and applicant was informed that the parties opposing Division B were entitled to notice of taking testimony to be used in that division. According to office rules all testimony referring to this division must be taken after Brown & Beadle, of Washington, D. C., have been duly notified. In answer to the question that verbal opinions or rulings have been expressed or made

by different parties to different parties, applicant is referred to Office Rule 142.

G. W. GREGORY,
Examiner.

DECEMBER 12, 1867.

SIR: I hereby amend the reissue specification, Division B, of my loom patent, as follows:

A. Page 3, line 4, by striking out the word "two." Page 5, A^1, by striking out lines 14 to 25, inclusive, and inserting—

["The weft passes across, above, and below the centre warps 3. See Fig. 3. And the interlocking of the moving warps 6, with such weft, presses said weft upon the centre warps, in weaving india."]

B. Page 6, line 5, by striking out "1st." Page 6, B^1, by striking out lines 12, 13, and 14, and inserting ["interlocking and forming two complete fabrics, one above and the other below the rubber cords, which fabrics are tied together by binding warps that interlock between the rubber cords, thus enclosing them in a woven pocket." In this]. C, page 6, lines 25 and 26, by striking out the words "held tightly by the warps," and inserting ["compressed by the wefts."]

By striking out from line 2, page 7, to line 1, page 8, inclusive, and inserting D, [I do not claim a fabric in which cords are introduced as weft, neither do I claim a fabric in which cords are introduced as warp and interlocked in weaving"]—erase words in brackets and insert amendment G, filed May 16, 1868.

E^1. Page 8, line 11, by striking out the word "tightly," F, page
1454 1, lines 24 and 25, by striking out the words "on each side," and inserting "above and below."

WM. SMITH,
Per L. W. SERRELL, *Atty.*

H. T. C. THEAKER.

Reissue Division B William Smith's Imp. in Woven Fabrics.

JANUARY 22*nd*, 1868.

SIR: At the time that the examiner in the above named case produced the truss of Enoch Thomas, said to have been filed in 1838, Mr. Smith, from his knowledge of woven and elastic fabrics, was of the opinion that there was something needing enquiry and explanation, and careful scrutiny, so as to determine for his own satisfaction whether he had any rights in the fabric or not. Actuated by this motive he undertook to find out said Thomas, and started upon a search for him, which resulted in a journey of nearly four thousand miles and discovery of said Enoch Thomas, the obtaining from him of the original letters patent which is now in the possession of Mr. Smith and also of two affidavits under the following circumstances:

When Mr. Smith found Mr. Thomas he mentioned the fact that a portion of his model was considered an anticipation of his claim, and he desired to learn from Mr. Thomas the particulars concerning the construction of the truss in question, when said Thomas produced his patent and was requested to note down the particulars of the construction of said model. After taking three days to think and study over his patent, and, entirely by himself, bring to recollection all the particulars, he dictated and executed the accompanying affidavit: Smith shewed Thomas the piece of webbing attached to said affidavit after

the whole of said affidavit except the last clause had been dictated, and he stated that he never saw or never used the same at any time in connection with said truss.

In view of this positive affidavit, and the fact that the statements of the patentee therein corresponds exactly with the records of your office, viz, the description in the patent itself, and the additional fact that the spiral springs and plate which the patent describes as in the pad shewn in Fig. 4, are not there in the model, a request is hereby made for the issue of said Division B of said reissue on the following grounds:

1455 1st. That the said truss of Enoch Thomas is not in the condition in which it was received in your office; that hence it is not reliable evidence and cannot be used as a reference in anticipation of said Smith's claim; that where an article is positively shewn to be in a different condition to what it was when delivered to your office, it ceases to be a valid record and cannot be used as evidence. It matters not who by or when or how the model was changed, it is enough to shew positively that change to stamp the model with such a doubt as to cause it to be ruled out as evidence.

2nd. That having met all the previous references of the examiner with full statements to shew the differences, and the said model of E. Thomas having been produced evidently as the last thing, and that now being set aside, there is nothing in the way of the issue of said patent.

3rd. That nothing more could possibly be asked of Mr. Smith to establish his claim before the Patent Office, and hence he is justly entitled to his patent, and if his opponents want to still further try to deprive him of his just rights, let them do it in open court, where Mr. Smith is ready to meet them, and where he is as confident as he ever was that the wrong actions of his opponents will, as they have in the past, eventually recoil upon themselves.

Respectfully yours,

LEMUEL W. SERRELL,
Attorney for W'M SMITH.

U. S. PATENT OFFICE,
Washington, D. C., Jan. 24, 1868.

WILLIAM SMITH, (L. W. Serrell, N. Y.:)

SIR: Please find below the decision of the examiner in charge in the matter of your application for a reissue of Patent No. , dated the 5th day of April, 1863, for improvement in weaving, and issued to William Smith and afterwards extended and reissued, filed Sep. 10, 1867, (Div. B.)

Very respectfully,

Commissioner.

1456 EXAMINER'S ROOM, No. 7.

The application above referred to has been considered in view of deposition and argument filed Jan'y 23, 1868. Applicant was referred verbally Dec. 14, 1867, for a fabric precisely like his to a truss having a card attached to it marked "Enoch Thomas, New Athens, O. In surgeon's trusses, pat. Mar. 12, 1840." The fabric on this truss is elastic, and the fibrous warp is green and the weft yellow. Thomas, in affidavit filed Jany, 23, deposes that the fabric on his truss was white, and from the positiveness of this deposition, a diligent search was instituted and a truss has been found among the rejected models bearing the name of

Enoch Thomas, and which exactly corresponds with his specification, drawing, and affidavit. The model now marked E. Thomas and above referred to, corresponds in many particulars with the real Thomas model and was taken for it in 1840, when the card was attached and it was placed with the patented models. The simple fact that this card of 1840 is attached to the old model is prima-facie evidence that it was in the office at that time. On the back of this truss in ink appears the following "Rec'd, without name, Dec. 20, 1838," and to show that the endorsement was made at that time by the proper officer, the machinist's record has been consulted, and in Vol. I, Record of models, second fly-leaf under head of "List of models received without name," appears the following entry: "Truss (put in drawer next Chase's), Dec. 20," and in same vol. under index letter T, top of page z, appears the following entry: "Thomas Enoch, truss, Dec. 5," 1839. These three endorsements are in the same handwriting and evidently made by the same person.

This unknown model is shown by office record that cannot be disputed to have been received December 20, 1838. The fabric could not have been secured to the truss after it was deposited in the office without taking the model entirely to pieces, or sewing through the pads and the same kind of silk used to confine the leather portions together are used to join the fabric to the leather pad. The fabric on this truss is precisely like applicant's; the elastic warps are held in place at top and bottom by weft threads only; it was made prior to December 20, 1838, where it matters not; and it is considered to be a good and
1457 sufficient reference to applicant's claim. The earliest record date when applicant made a fabric like this is about 1849.

Aside from this fabric referred to, the office yet considers that the looms referred to in *in* office letter of December 7, 1867, will make a fabric like the one claimed. The testimony taken to show that these looms would not or could not produce such a fabric is not conclusive, was not confined solely to the point at issue, viz: a fabric with large warp held in place only by weft, but was confined and directed to certain parts of these English specifications not pertinent to the point at issue. The claim is again refused.

G. W. GREGORY,
Examiner.

Objections to the reissue of Division B.

In the Patent Office of the United States.

In the matter of the reissue of letters patent granted to William Smith, April 5, 1853, once reissued June 1857 and now again to be reissued in three parts.

STATE OF THE CASE.

Long before the invention patented to W'm Smith, April 5, 1853, a well-known fabric was made called corded goods whose peculiarity is that one "shed" of warps is composed of larger and different fibres, or cords, from the other "sheds," and the filling is always passed outside of those larger cords or warps, and is interlaced between them by the intermediate smaller warps. Either the same or different kinds of filling may be used for the opposite sides of the goods; but in either case the cord warps are never exposed to view. Some of these goods have only

one pair of warp threads to each cord, in which case the greater part of the surface appears corded; and some of them have several warps between the cords, in which case the surface appears smooth for a greater part of the width than is made prominent by the cords. Some of these goods had the cord warps of non-elastic fibres, and some of them of india-rubber threads; and the goods were elastic or not accordingly. All these goods are perfectly described and comprehended in the claim which W'm Smith now proposes to take in a reissued patent
1458 in these words: "A fabric * * formed with central warps, enclosed by the weft threads that are held upon the surface of the centre warp by the interlocking of the middle warp between the centre warps, thereby causing the weft-threads to be pressed tightly upon the centre warp;" and such a claim as that would cover all these goods, which were known and used before William Smith was born.

On April 5th, 1853, W'm Smith took a patent for a process of weaving these goods, which depended for novelty upon the manner in which the loom was operated. The patent comes under the statutory division of "an improvement on a machine;" and the word "process" is used to explain that improvement.

In 1849, four years earlier the same improvement was patented in England where it is now public property, and where Smith alleges it is now used to weave shoe gores. In 1867, Smith extended his patent by swearing back his invention before the English patent; and in June, 1867, he reissued the patent with a somewhat different claim from the original one, but still with a claim only for the process he invented. He now applies for another reissue in three parts: one for the process; one for some trifling detail in the loom; and one for corded fabrics generally in the language quoted above.

The reason of this attempt is, that Smith undertook to levy a contribution upon about fifty shoemakers, and others, who were using English shoe gores, which he alleges were made on the English machine similar to his and patented in England in 1849; and he actually commenced about fifty suits against these people for injunctions but when he found that instead of paying the few dollars or cents which he demanded they refused and filed demurrers on the ground that the inventor of one sort of loom for weaving an old fabric cannot patent the particular pieces of that fabric made on his new loom, he had no other resource than to come to the patent office and endeavor to add to his original patent for the process, another one for the fabric; and that is now the claim.

The patent of 1853 contains all that is necessary to know in order to refute this pretension. In that patent M'r Smith states very distinctly the thing he invented, and the reasons why it is an improvement. He says that in the old process of weaving these goods, the cord warps were raised and lowered by the heddles in the same way that the "middle warps" were; from which three evils resulted according to M'r
1459 Smith; first, the goods were not so smooth when woven; second, the cord warps being raised by the heddles, were subjected to more friction than if left still and therefore were more liable to break in weaving; and thirdly, only one shuttle could pass at a time when the cord warps were raised and lowered, whereas if stationary in the centre, and the middle sheds were separated above and below, two shuttles could pass simultaneously, "requiring but half the time" thereby "producing a corresponding saving of cost." The advantages of the machine as stated in the patent are 1st, that the corded fabric in the old loom "has ribs produced on its surface caused by the india rubber in raising and lowering imbedding itself in the filling," whereas by the

use of the new process "but a slight rib is formed on the surface of the "goods"; and 2d, that it is a cheaper way of weaving; because the warp don't break as often, and it weaves twice as fast. And the reason why these advantages result is one single idea: viz., that in weaving the cord warp is held stationary in the loom; in other respects it is the old operation.

ARGUMENT.

No reissue of the sort proposed can be legally granted to Wm. Smith.

1st. Because he is not the inventor of the fabric which he proposes to patent; and 2d. Because if he were, it cannot be patented on the papers and model to which he is confined on re-issues.

First. He is not the inventor of the fabric or "manufacture," which he proposes to patent. A textile fabric is known by the arrangement of the fibres which compose it; and a new fabric must show a substantially new arrangement or combination of fibres. In order to found a patent on a new fabric, it is immaterial by what machine it is made. The inventor of plain cloth could patent "a fabric composed of fibres laid at right angles to each other and alternately crossing above and below each other," although made by hand, and the inventor of a loom for weaving that fabric would be subject to the prior patent for the fabric itself, and could not have another patent for the fabric because it was made on the loom instead of by hand. His loom could be patented and he would have all the advantages which it possessed over the old method in cheapness and better finish; but that is all. Before the Jacquard loom was invented, a fabric was made by the "draw-boy"
1460 process similar to that which the Jacquard produced, but not so smooth or perfect, because the warp were lifted by hand instead of machinery; but certainly the inventor of the Jacquard loom could not claim as a new "fabric" the pictured goods made by his loom. The case is precisely similar to this one; and the advantages of the Jacquard are precisely what the patent claims; viz, a more perfect finish, and cheaper weaving.

The fabric for which Smith now claims a patent is made with a series of warps of which one out of every certain number is a cord, or large warp, and which is always covered by the filling on both sides. In the simplest form of it a section is shown in the accompanying sketch.

Fig. 1 represents a section through the cloth showing a filling of red on one side, and blue on the other, and two middle warp threads; but any number may be used. This is the simplest form. Fig. 2 represents a top view of the goods; and Fig. 3 a section lengthwise through one of the middle warp threads. This is the fabric that would be produced by the loom of Smith as far as the drawing indicates; but no description of that fabric is given in the patent, and the Fig. 3 of the patent does not show how the fabric would appear if cut crosswise. This is an old, well known fabric, and the patent does not aver it to be new or describe it at all; but on the contrary speaks of the fabric as old, and describes how it was usually woven, that is by moving the cord warps as well as the middle ones. It is evident therefore on the face of the paper, that Smith is not the inventor of the fabric, and does not claim to be.

Secondly, if he were the inventor, he could not patent it by way of re-issue on the papers now before the office. A patent can only be granted in law for one of four things, "An art, machine, manufacture

or composition of matter," or for an improvement on one of these. A new fabric is a manufacture and cannot be patented in the same patent with a "machine," or a "composition of matter." The inventor of a shoe last, and of a machine for turning shoe lasts, cannot patent both in the same patent; they are different subjects. And if an original patent cannot be taken for two different subjects, it follows that an original patent for one subject cannot be re-issued in two patents
1461 for two different subjects. In this case a patent for a single subject, viz: an "improvement on a machine," is attempted to be re-issued in two patents, one of which is for all that the original patent covers and the other for a new "manufacture" which may be made on that machine or upon some other.

But if it were lawful to reissue such a patent under any circumstances, it could not be done in this case; because the thing claimed is a manufacture, and there is no description of the manufacture given in the patent, nor was there any sample of it deposited with the original application. If this were a new manufacture, a full and exact description of it must be given, distinguishing it from other manufactures known before, and a sample of it must be filed, and the inventor must swear that he believes himself to be the inventor of that new "manufacture." None of these things is done. On the contrary the fabric produced is referred to frequently as made on other looms; and the only attempt is to show how this new loom or process will make that same fabric cheaper and better. The only specific reference in the original patent to the fabric, is made to show how the loom works in producing it, and is necessary in order to illustrate the process. It is in these words: "The loom in working forms a fabric as shown in large size in Fig. 3, the warps 6 passing up and down through the stationary centre warp 3, and the upper shuttle *i* cord filling forms a fabric on one side of the warp 3, while the lower shuttle *h*, and its filling, forms a fabric on the under side." There is no pretence that the fabric when produced presents any new arrangement or combination of its component fibres; but only, that for the greater convenience in weaving, the centre warp is held stationary, whereas usually it is moved.

Whenever Mr. Smith describes the fabric that he attempts to cover by a reissue, and swears that he invented it, we shall know how to dispose of Mr. Smith; but if, by describing a machine for making these goods, and swearing he invented that, he can induce the office to grant him a patent for the goods which he does not swear he invented, it is a very safe operation for him.

The statement in the reissue is, that "the object of the invention is to produce by weaving, a fabric that has a centre warp enclosed on each side by weft threads, held in place by interlaced warps." That is, his object is to produce the ordinary corded goods by weaving; for
1462 there is no pretence that the goods here described are new. As a general statement this is well enough, and when followed by a description of the means whereby he effects that object, would lay a good foundation for such a claim, as is in the reissued patent just surrendered; but it lays no foundation for claiming the goods. Blanchard's object was to produce by turning, gun "stocks," and he patented his lathe, and the way of working it; but he could not patent gun stocks, any more than Smith can patent this fabric, because the object of his invention is to produce it.

It is suggested, however, by the Examiner, that although a patent may not be granted for the fabric as claimed, yet it may be granted if

the claim were amended so as to effect in some way the fabric produced with the fact that in producing it the centre warp was held still instead of being moved. Although perhaps it is enough to answer the present proposed claim and impossible to foresee exactly in what other form it may be proposed, yet there must be one characteristic of any possible claim founded upon the idea suggested which can be stated in general terms. The supposed new claim must be in words or substance as follows, where the new idea is added to the present claim: "I claim a fabric formed with centre warps enclosed by the weft threads that are held upon the surface of the centre warp by the interlocking of the middle warps between the centre warps thereby causing the weft threads to be pressed tightly upon the centre warps—whenever in weaving such fabric the centre warps have been held stationary, but whenever they have not been held stationary I do not claim the fabric." As I understand the Examiner's suggestion, he is of opinion that possibly this might be considered a new "fabric," because it was woven on a loom which held its centre warp stationary, instead of being woven on a loom which worked the centre warp in the process of weaving, although when woven the fabric has the same combination of fibres as the old fabric had; and that a claim for the "fabric" which will include in it the suggestion that the warp was held stationary in weaving will be allowed. And the reason why he thinks so is, that the fabric produced on Smith's loom, although not differently combined, is said in the patent to have but a "slight rib" formed "on the surface of the goods," whereas the fabric woven on the old loom the patent says "has ribs produced
1463 on its surface." As the patent states the difference is between a "rib" and a "slight rib"; and upon this difference the patent is to stand if it stand at all. In the first place there is no such difference in fact; although when called upon to define the difference between "a rib" and "a slight rib," perhaps it is not capable of a definition, seeing that we are confined to much less than the diameter of filling yarn in fixing our limit of a "slight rib" and dividing it from "a rib."—The "rib" and the "slight rib" spoken of in the patent, are not the ribs which the cords make in the transverse surface lines of the fabric, but they are "ribs" and "slight ribs" supposed to be made in the cords themselves, in the longitudinal surface lines; as the patent says, "caused by the india rubber in raising or lowering imbedding itself in the filling or woof, leaving the india rubber and its covering raised on each side": that is to say, the india rubber cords being raised above the level to allow the filling to pass below them and being lowered below the level to allow the filling to pass above them do not resume their original straight lines, but are bent up and down in a succession of "ribs" or "slight rib" each of which is as long as the diameter of the filling yarn, and as high as the india rubber can be raised between two strands of filling, which, in the fabric, touch each other. If the india rubber cords were slack in weaving and the filling threads wide apart and drawn tightly across the fabric, such an effect might be produced with either loom, but in fact the india rubber threads are tightly drawn, and stretched in weaving (otherwise the cloth would not be elastic, but would be limited in length by the non-elastic warps) and the filling threads are close together and slack, their tension being only such as the shuttle can give them; and the angle of elevation of the shed is so small that the amount of rise above the level of the warp in the thickness of one filling thread is only capable of being stated in infinitesimal quantities; and when the tight rubber cord is taken down as far below the *the* level as it was above it, carries the filling with it, and is not left either in a "rib" or

a "slight rib" above the level. And the filling threads are beaten up by a "lathe" into contact with each other, and the opposite fillings balance each other, so that the tendency to a rib is neutralized. The question of "ribs" or "slight ribs" is one of tension in weaving, and not of arrangement of fibres, and no human being can tell by the test of "ribs" and "slight ribs" whether the fabric was woven on one or the
1464 other of the machines. But if this were an advantage of Smith's loom it does not constitute a new fabric. It makes the loom more valuable, and so rewards the inventor, but it does not make a new fabric. It is a difference in the degree of perfection not in the kind of fabric. Blanchard's process of turning made a much more perfect gun stock than could be made by all the former processes. It fitted the iron work better, and each was like all others, so that it was much more valuable when made, as well as cheaper to make; but for all that it was only a gun tock, and not a new manufacture. Every improved process of weaving by machinery makes a better fabric than the inferior process did; but the better fabric is not a new fabric. Bigelow's carpet loom is patented, but not the carpet; but if Bigelow had invented a new combination of fibres to make a carpet he could have patented it as a new "manufacture" but not in the same patent with his machine for making it. The error, as I understand it, consists in endeavoring to make the motion of the warp in weaving become an element in the fabric when woven, and adhere to it forever. If the middle warps kept moving, and the cord warps were still in the fabric, that would contribute a new fabric, but they are all stationary together in the fabric (except when the shoe is moving), and there is no trace of the process remaining. Apply the test which the law applies to this patent if granted, and which would at once be applied in practice. These shoe-gores (the goods that Smith is after) are now all imported from Europe, and the shoemakers buy them from the merchants. Mr. Smith calls upon a shoemaker and demands five dollars for using his new fabric. The shoemaker asks Mr. Smith to point out the peculiarity of his fabric so that he may not buy it again. The reply is that it was woven on a loom which held the centre warp stationary, and the shoemaker must not buy the goods that such looms weave in England and France. But the shoemaker says he has no means of knowing that; the fabric is just such as he has been using for twenty years; pick it apart and it is the old article, and how is he to know? There may be a dozen kinds of looms that will weave it as well as Mr. Smith's loom, and certainly there are several kinds that will, and how can the shoemaker know? If the patent was for the fabric as proposed in the reissue as now written—that is for corded fabrics generally—of course there would be no difficulty,
1465 because upon inspection the goods answer the claim of the patent: but when the claim comes to be for the same goods only when woven on a machine similar to the one patented by Smith, then there is no way of indentifying the goods except by tracing them up through the channels of trade to the factory in England or France and finding out there whether they were made on the loom patented in England in 1849; if so they infringe Smith's patent, otherwise not. It must be plain that a patent for a fabric like a patent for a machine must be a patent for some arrangement or combination which is inherent in the fabric itself, and can be seen on inspection of it, and cannot be a patent for an old fabric made cheaper or with a "slight rib" instead of a "rib," or more enduring because less worn out in the process of weaving, or because of any other thing which does not affect the essential nature of the fabric, but only its greater or less degree of perfection.

Whenever these goods are made in this country on Smith's loom he has the advantage of the patent, but in fact none of the millions of these corded elastic goods, such as suspenders, garters, tapes, etc., made here are made on this loom, but all are made with movable cords, showing at once that the pretence of value in the loom is groundless. The trouble with Mr. Smith is that the manufacturers of these goods in this country do not use his loom, although everything but shoe gores are made here; and he therefore wants a patent for the goods made abroad (upon what loom we do not know) in order to levy a contribution on shoemakers who might find it cheaper to pay him ten or twenty dollars a year than to employ a lawyer to defend against unjust litigation. If it be true as Smith says that the foreign goods are woven on a loom similar to his, then it is his misfortune that an English inventor took the liberty of inventing and patenting this process in England about four years before his patent here; so that even if he honestly invented it, and did not copy the English patent, he could not take a patent in England; and never after eighteen years public use of these goods. Without question Smith proposes to patent them by reissue and levy a tax on the poor shoemaker who cannot afford to fight him in court.

(Endorsement:) Objections to the reissue of Division B, of patent of William Smith, April 5th, 1853; once reissued June 18th, 1867. Brown & Beadle.

1466 *Affidavit of Enoch Thomas.—Filed by W'm Smith in relation to Reissue B, Elastic Fabrics.*

STATE OF ILLINOIS, KANE COUNTY,
Town of Batavia, ss.

ENOCH THOMAS being duly sworn doth depose and say that he is a resident of the above named town, County, and State, and a citizen of the United States.

And deponent further says that on the 12th of March 1840, he took out a patent from the patent office in Washington, D. C., in the United States, for a truss called the Hernial and Uterine Elastic and Spring Supporter.

And deponent further says: That he used elastic suspender webbing for the belt of said truss and the said elastic suspender webbing was imported from England and that the said webbing was one and one half inches wide made all of white cotton threads woven together very firmly and made very stout and heavy for that purpose.

And the said deponent Enoch Thomas further says: That he used no half inch suspender webbing on said model neither elastic nor non-elastic nor did he use any green elastic suspender webbing or partly composed of green, but the white one and one half inch suspender webbing as aforesaid, and if any elastic webbing is attached to the model of said truss of one half inch wide or one and one half inches wide of any color, it was not put there by said deponent or with his knowledge or consent nor was it attached to the said model of the above said truss when delivered in the said Patent Office at Washington D., C., United States of America.

And deponent further says: That there was no other elastic suspender webbing but one and one half inches wide, and every part of the model of said truss is described in the specification, and every color of the straps of said truss, whether of leather or woven webbing, is so colored the same color in the drawing of said patent.

1467 And deponent further says: That the green and pink stripe webbing attached to this affidavit he never saw or never used at any time in connection with said truss.

All of which deponent verily believes to be the truth.

[SEAL.] ENOCH THOMAS.

Subscribed and sworn to before me this 14th day of January A. D. 1868.

WALLACE CRAWFORD, *J. P.*

STATE OF ILLINOIS, KANE COUNTY
Town of Batavia, ss.

Enoch Thomas being duly sworn doth depose and say, That the stitching on the truss mentioned in the foregoing affidavit was very fine chain stitching, the holes being made with a fine, flat awl and the holes made by said awl being close together having a neat beautiful appearance in the stitching.

All of which deponent verily believes to be the truth.

ENOCH THOMAS.

Subscribed and sworn to before me this 15th day of January, A. D. 1868.

WALLACE CRAWFORD, *J. P.*

STATE OF ILLINOIS,
Kane County, ss.

I, Henry B. Peirce, clerk of the County Court of said County, in the State aforesaid, do hereby certify that Wallace Crawford, Esquire, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a Justice of the Peace in said county, duly commissioned, sworn and acting as such and authorized to take the same; and, further, that I am well acquainted with his hand writing and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Geneva in said County, this 15th day of January 1868.

[SEAL.] HENRY B. PEIRCE, *Clerk.*

1468 NEW YORK, *February* 6, 1868.

SIR.—In regard to division B of my reissue of patent granted April 5, 185⅓, on woven fabrics, I have to request that your office will not recognize any person as authorized to act in my behalf in said case from this time, except L. W. Serrell, New York, or such other persons as him or myself may give a written authority bearing a date subsequent to this instrument.

Respectfully yours,

WM. SMITH.

Hon. COMR. OF PATENTS.

NEW YORK, *Feb.* 26, 1868.

SIR: In regard to the reissue application (division B) of Wm. Smith's patent on elastic fabrics, placed on turn for appeal before Hon. Examiners in chief, I desire to be informed officially whether any other models or references have been or will be given in this case than the truss of

Seth Thomas and the model incorrectly marked with his name. We are entitled to this information in order that this case may be properly prepared for said appeal before it is brought up for action.

An immediate reply will oblige

Yours respectfully etc.

LEMUEL W. SERRELL.
Attorney for Wm. Smith.

Hon. COMR. OF PATENTS.

U. S. PATENT OFFICE,
Washington, D. C., Feby. 29, 1858.

WILLIAM SMITH, L. M. Serrell, N. Y.

SIR:—Please find below a communication from the Examiner having charge of W. Smith's application for reissue of his patent, Div. B.—Weaving.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

In the matter above referred to, applicant is informed in answer to his communication of the 25th inst. that the model accompanying the
1469 application rejected of James Younge "Machine for alleviating and curing the Piles," filed Aug. 30, 1845, shows a fabric like his and is given as reference in addition to the references heretofore given.

G. W. GREGORY, *Ex.*

COLUMBUS, MISS, *March 13th*, 1868.

The Rev. James Younge, a Methodist preacher, formerly resident here, is now in bus. in your city.

Inquire for whereabouts of Baskerville & Shuman, 260 (?) Canal street, a short distance east of Broadway.

Very truly,

Affidavit of Wm. Smith.

In the matter of the Reissue of the Patent of William Smith, Granted April 5th, 1853, Extended for seven years, March 28, '67, Reissued June 18, '67, Pe'tioned for Reissue September 10, '68.

WILLIAM SMITH being duly sworn, says, that he is a citizen of the County, State and city of New York; that he is the patentee of a patent for an improvement in weaving corded fabrics, issued May 5th, 1853, extended March 28th, 1867, reissued June 18th, 1867, petitioned for another reissue in three Divisions, A, B and C, on September 16, '68. A and C has been issued to said patentee, by the patent office, January 14th, 1868.

And the deponent further says, that on the consideration of the Division B, the office has referred this deponent to a model in the patent office, deposited there in August, 1845, of one Dr. James Younge, of Columbus, Miss.

And your deponent further says, that he has made all the efforts in power and means to find the said Dr. James Younge, by writing to different cities in Tennesse' and Missis'ippi. Amongst other means he applied to the Mercantile agency, of Mess. Dunns, corner of Reade street

and Broadway, in the city of New York, to write to Columbus, Mississippi, to make enquiries about the said Dr. James Younge, if he was living or dead, or removed to any other locality; the annexed paper is the answer received by the said Mercantile agency, the name
1470 of the correspondence being torn away, being the invariable custom of all Mercantile agency.

And your deponent further says, that he made enquiries according to the instructions in the said annexed paper, and found the Rev. James Younge, at the Banking House of Freeman and Petty, No. 80 Broadway, in the aforesaid of New York, who said he was not the person meant, that he never took out or applied for a patent, that he did not reside in Columbus, Miss., until 1865, and never heard of, or knew the said Dr. James Younge.

WILLIAM SMITH.

Sworn to and subscribed before me, this 11th day of April, 1868.
[SEAL.] EDW. F. BROWN,
Notary Public.

Affidavit of Caleb Holt.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

CALEB HOLT of said city, being duly sworn, deposes and says that he has been in the business of the sale of suspenders for the last twenty years.

That he knows that in cotton suspenders the color are very liable to fade; that this is particularly the case where suspenders are exposed to the action of light and air.

That in such suspenders so exposed the color will fade out in about three to five years, according to the colors, so that they would be worthless for sale.

CALEB HOLT.

Sworn before me this 1st day of April A. D. 1868.
[SEAL.] CHAS. H. SMITH,
Notary Public.

To the Honorable Commissioner of Patents.

SIR, In the matter of Wm. Smith's Reissue application for a patent on a Mode of Weaving Corded Fabrics, we hereby respectfully re-
1471 quest a second examination of the case with the earnest request that a favorable decision be rendered.

Very respectfully,
MASON FENWICK & LAWRENCE,
Associated Counsel for Smith.

APRIL 17, 1868.

U. S. PATENT OFFICE,
Washington, D. C., April, 18, 1868.

WILLIAM SMITH, Present:—

SIR,—Please find below the Decision of the Examiner in charge in the matter of your application for a reissue of Patent No. , dated the 5th day of April, 1853, for Improvement in Weaving, and issued to William Smith and afterwards extended and reissued filed Sept. 10, 1867, Div. B.

Very Respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

The application above referred to has been reconsidered agreeably to request of 17 inst. The references given in office letters of Dec. 7, 1867, Jan. 24 and Feb. 29, 1868 are yet considered pertinent references to the claim presented and it is again refused.

G. W. GREGORY.

NEW YORK, *May* 13, 1868.

SIR,—I hereby amend the specification of my reissue for an Improvement in Elastic Fabrics, filed September 10, 1867, by striking out the disclaimer and claims and inserting as follows:

Amendment G.—Filed May 16, 1868.

Wm. Smith's amendment. Imp't in weaving.

G.

I am aware that prior to my said invention, corded fabrics were produced. In some instances, as in Windsor carpets, the cords were introduced as an upper weft on the upper surface of a complete woven cloth as a foundation, the figuring warps passing from the foun-
1472 dation cloth over each cord and back to the foundation cloth. In other instances the cords constituted part of the weft, with thread wefts interposed, such cords being interwoven with the warp in like manner as the interposed weft threads, each warp thread passing under some of the cords and over others, and one warp thread passing over and the next one under any one of the cord wefts, and so on across the entire width of the fabric. In others the cords were introduced as part of the warp, and with warp threads interposed, but in such case the cords were interwoven with the weft threads just as the interposed warp threads, that is to say, each weft thread passed over some of the cords and under others, so that the pull on the weft threads would tend to crinkle the cords, and in the woven fabric the only thing which prevented the cords from being crinkled as warp threads are crinkled in ordinary fabrics, was the greater rigidity of the cords. In other cases, as in the border of handkerchiefs, cords were introduced at given distances apart, both as warp and as weft, but both being woven in as ordinary warp and weft, as above stated, the crinkling of both sets of cords by the interweaving being prevented only by the fact that the cords were more rigid than the other warp and weft threads.

And in other cases the longitudinal cords were separated and enveloped by the intervening of the warp threads and weft threads between and around the cords, in alternate strips of single and of double cloth, as a single cloth between the cords, and as double cloth to form what may be termed tubes surrounding the cords. And although there was no tendency in this to crinkle the cords, it was defective for many purposes because the warp threads and weft threads being interwoven into cloth both above and below the cords, there was nothing to prevent the cords from being pulled or working out the tubes.

The features which distinguish my improved corded fabric from all others before known, are as follows, viz; The cords are longitudinal, and may be termed cord warps; they are separated from each other by the interweaving of the warp threads and weft threads in strips of cloth between the cords only, and not over and under the cords, and the cords are covered on both surfaces by weft threads only; the weft threads

are not interwoven with the cords as in the case of corded handkerchiefs, tending to crinkle them, as above stated, but each weft
1473 thread passes either over or under all the cords instead of passing first under one cord and then over the other, and so on across the fabric, and it is interwoven only between the cords and only so interwoven with the warp threads. The fabric being so constituted at every part of the length, the cords are griped between two weft threads one above and the other below, which two weft threads are drawn each half way around each one of all the cords by being interwoven with the warp threads in the several spaces between the cords. In this way the cords are firmly held in the fabric so that they cannot work out nor can they be pulled out, whilst at the same time the binding force by which the weft threads gripe and hold the cords does not tend to crinkle them.

[In view of the foregoing, I wish to be understood as not claiming broadly a corded fabric. But what I do claim as my invention, and desire to secure by Letters Patent, is, the corded fabric substantially such as described, in which the longitudinal cords are held between the upper and the under weft threads, and separated from each other by the interweaving of the upper and under weft threads with the warp threads only in the spaces between the cords, as set forth.]—Erase words in brackets and insert X, filed June 13, '68.—

WM. SMITH.

Hon. Com. Patents.

U. S. Patent Office,
Washington, D. C. May 18, 1868.

William Smith, L. W. Serrell, N. Y.

Sir,—Please find below the Decision of the Examiner in charge in the matter of your application for a reissue of Patent No. , dated the 5th day of April 1853, for improvements in weaving corded fabrics and issued to W. Smith filed Sept. 10, 1867, Div. B.

Very respectfully,

Commissioner.

Examiner's Room, No. 7.

The application above referred to has been considered in view of the amendment of the 16th inst., and from the same no reason is dis-
1474 covered for change of opinion, as heretofore expressed, and the claim is therefore again refused, in order to place the application in proper condition for appeal.

G. W. GREGORY,
Examiner.

Washington, *June 13th*, 1868.

To the Commissioner of Patents:

Sir: I hereby amend the specification in an application for the reissue of my patent for an improvement in elastic fabrics, filed Sept. 10th, 1867, and in the division thereof marked B, in the following manner:

Strike out the last paragraph in the amendment to such specification which was filed May 10th, 1868, which embraces the six last lines on page 4, and the first seven lines on page 5 thereof and insert instead as follows:

H.

"I am aware that in an old French work on the weaving of silk goods, which was printed in 1778, a fabric is described in which certain tie threads are interwoven in some parts of the fabric in substantially the same way that my elastic cords are interwoven. But nothing of the kind now contemplated by me was then attempted or accomplished.

"Protesting therefore that this is not a reference sufficient to prevent me from obtaining the patent now sought, but unwilling to consume more time at present in controverting the point made thereon by the Patent Office, I hereby disclaim the purpose of including all kinds of weaving of the kind hereinbefore described, but limit myself to such fabrics where the 'cords' are elastic.

"What, therefore, I claim as my invention in this subdivision of my patent is the corded fabric substantially as hereinbefore described, in which the cords are elastic and are held between the upper and under weft threads and separated from each other by the interweaving of the upper and under weft threads with the warp threads in the spaces between the cords, and only those, substantially as above shown."

WILLIAM SMITH.

1475

U. S. PATENT OFFICE,
Washington, D. C., June 15, 1868.

WILLIAM SMITH, Esq., present:

SIR: Please find below the decision of the examiner in charge in the matter of your application for a reissue of patent No. 9653, dated the 5th day of April, 1853, for improvements in weaving, and issued to W. Smith, and extended and reissued, filed Sept. 10, 1867, Div. B.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 7.

The application above referred to has been again considered, the appeal to the board of examiners-in-chief having been withdrawn for the purpose of introducing an amendment in view of a description of a fabric shown in "Description des acts et metiers," Etoffes de soie; vol. 11, pl. 70. The object of the amendment is to restrict the claim to a fabric having an elastic cord warp, the specification being sufficiently broad to include a cord of any material. The amendment does not so limit the invention that the references heretofore cited are not now pertinent, but they, on the contrary, fully anticipate the claim as amended, and it is again necessarily refused.

G. W. GREGORY, *Examiner.*

Reissue. Div. B. No. 3,014. William Smith, of New York, county of New York, State of New York. Weaving corded fabrics.

Rec'd Sept. 10, 1867. Petition. Affidavit. Specification. 1 drawing.

Old patent in Div. A. 1. Cert. dep. $30, Sept. 10, 1867, cash.

Examined board of examiners-in-chief, June, 1868.

2. Issue N. W. Heilborn, June 19, '68.

1476 3. Patented April 5, 1853. Ext'd 7 years and reissued June 18, 1867.
Reissued June 30, 1868.

L. W. SERRELL,
New York, N. Y.

Letter, Nov. 16, 1867.
Letter, Dec. 7, 1867.
Spec'n to me, Dec. 14, 1867.

L. W. SERRELL.

Rejected Jan. 24, 1868.
Letter additional ref. Feb. 29, 1868.
Rej'd Apr., 1868.
Rejected May 18, 1868.
Spec'ns, amdt's, and dr. to attorney June 13, '68.
Rej'd pro forma amendment, June 15, 1868.

Certified copy, No. 10.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof, I, S. S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

1477 *Decision of examiners in chief.*

No. 3008. Division B. Elastic fabric. Application of W'm Smith for a reissue of patent granted him April 5, 1853.

U. S. PATENT OFFICE, *June* 18, 1868.

Before the examiners-in-chief, on appeal, application of William Smith for the reissue of a patent granted to him April 5, 1853, extended March 28, 1867, and reissued June 18, 1867, for an improvement in elastic fabric, division B.

The board, per Elisha Foote:

The applicant appears to have made a decided improvement in rubber or elastic goods. His mode of forming the fabric is found in an old French work applied to the making of channeled ornamental stuffs. But he claims to have been the first to apply it to elastic fabrics, and thereby to have affected a great improvement in that class of goods.

The examiner has rejected the application on a reference to two specimens of channeled elastic goods that were found in the office with labels older than the applicant's invention. So many doubts, however, have arisen in regard to these specimens, that we have deemed it proper to allow the patent and give the applicant an opportunity to settle the questions arising upon them in a court of law. The examiner's decision is accordingly overruled.

ELISHA FOOTE,
S. H. HODGES,
Examiners-in-Chief.

Certified copy, No. 11.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office, of the file and contents in the matter of the reissued letters
1478 patent granted William Smith, dated April 5, 1853. Extended 7 years; reissued June 18, 1867; re-reissued January 14, 1868; No. 2844.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] SAMUEL S. FISHER,
Commissioner.

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Power of attorney.

N. Y., *April 20th*, 1867.

SIR: I hereby appoint Lemuel W. Serrell, New York, my agent and attorney in relation to my application for reissue of letters patent granted to me April 5th, 1853, extended March 28, 1867, for weaving corded fabrics, and authorize him, or his substitute, to do whatever may be necessary in the premises, as fully and entirely as I could do if personally present, and to receive the patent when granted.

Respectfully, yours,

WM SMITH.

Hon. T. C. THEAKER,
Commissioner of Patents.

[50 cent stamp cancelled.]

1479 OFFICE FOR PATENTS,
119 *and* 121 *Nassau street, New York, April 20th*, 1867.

SIR: Herewith you will receive the petition, oath, specification, thin drawing, and old patent, and certificate for thirty dollars, as the fee payable thereon, constituting the complete application of William Smith

for reissue of letters patent granted to him April 5, 1853, extended March 28, 1867, for weaving corded fabrics.

The correspondence on this case, and also the patent, when granted, you will please address to my care.

Respectfully, yours,

LEMUEL W. SERRELL
& C. H. SMITH.

Hon. T. C. THEAKER,
Commissioner of Patents.

NEW YORK, *May 3d*, 1867.

SIR: Not having seen the examiner when I called in his room yesterday afternoon, relative to the reissue of W'm Smith's patent on looms, I write to call attention to the fact that is shewn by M'r Smith's affidavit and others, in the extension of this patent, that his invention was made here nearly two years before his application for a patent, so that any foreign patent, to have any hearing upon his claims, would have to be enrolled or published as early as Oct., 1850.

Believing that the first foreign patent is in 1853 that bears on this subject, and that that was stolen from M'r S., I think the way will be found entirely clear for granting this reissue immediately.

Respectfully, yours,

LEMUEL W. SERRELL,
Att'y of W'm Smith.

Hon. T. C. THEAKER.

Affidavit of W'm Smith.

In the matter of reissue of W'm Smith's patent of April 5th, 1853, and extended, for improvement in weaving.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

WILLIAM SMITH, being duly sworn, deposes and says:

I was unfortunate in business in the winter of '48 and '49. I
1480 had been for years before a manufacturer of upholstery and dress trimmings. My difficulties were largely resulting from the cholera visiting this country. I saved a part of my machinery from the wreck of my property.

In May, 1849, I conceived the idea of making gusset elastic webbing by weaving a fabric on each side of a stationary warp. I had previously contemplated the making of heavy non-elastic goods as early as 1847.

In the summer of 1849 I made a few inches of said elastic webbing by hand to shew my improvement. I made an agreement with Messrs. Dodd and Wakeman, of Newark, New Jersey, to take my machinery over to Newark, N. J., and fit it up there and alter it to weave elastic goods upon the plan afterwards patented by me. I removed my machinery according to agreement, and commenced to fit up the same in Newark, but the said Dodd and Wakeman did not carry out their agreement. They refused to find money as they had agreed to, and I had to abandon my machinery and come away and leave it behind me. I never recovered said machinery, and a litigation ensued lasting many years. At the trial the jury did not agree.

Being left entirely without funds, I commenced in the early part of the year 1850 to weave elastic goods in a hand-loom that I borrowed and

temporarily fitted up. I raised seventy-five cents to purchase the first materials used in making such elastic goods, and worked them up and sold the goods and used the money to buy more material, and so kept on endeavoring to accumulate sufficient to build two larger looms. These efforts continued during the year 1850. The loom was kept in secrecy, as far as I could, and I was improving it from time to time. I arranged to have two looms built and had to part pay for them as they progressed, and when delivered about December, 1851, they had to be almost all made over before they would work satisfactorily, the machinist having gone to California. All these circumstances, and my straightened financial condition, delayed the entire completion of the looms until about the middle of the year 1852.

I had had several interviews with the late William Serrell before his death in April, 1852, about procuring a patent on my said machine, and my model was made and application for a patent prepared and presented as soon as my circumstances would permit of the same be-
1481 ing done, viz., in October, 1852. Up to the time of making my application for a patent, I had never heard or known of the use of a stationary warp in a loom with or without a fabric woven on the two sides, and the same was entirely original with me, and the mode of weaving invented by me in 1849 was the same as that set forth in my application for a patent.

WILLIAM SMITH.

Sworn before me this 11th day of May, 1866.

CHA'S H. SMITH,
Notary Public.

NEW YORK, *May 11th*, 1867.

SIR: In the matter of my loom patent reissue, rejected 6th inst., I have to call the attention of your honor to the following points:

1st. The loom of Heywood, No. 12768, A. D. 1849, is for weaving the twisted warp like a mosketo netting; the one warp being drawn under the other, does not leave the fabric in the same form as mine, viz, a stationary warp with a woven fabric on each side; besides this, the date of this patent, in the eye of the law, is the time of the enrolment of the specification, viz, March 1, 1850.

2d. Now none of these English patents are of as early date as my invention; in my affidavits filed in the extension of this patent this point is clearly set forth. My invention dates back to the year 1849; and I pursued the same with the utmost diligence, and no act of mine can in any manner be considered as in the least injuring my rights. I acted in good faith in obtaining a patent so soon as I could fully carry out my machine in a perfected form, to include the improvements that adapted it to being run by power.

3d. Your honor is referred to the following decisions that shew that these foreign patents granted after the date of my invention have no bearing upon my right. (See Howe v. Morton, 13 Mo. Law Rep., 70; Sprague, Mass, 1860, Laws Digest, p. 333.) "A foreign patent in order to defeat an American patent for the same invention must have been patented before the discovery or invention here, and not merely before the application." "An invention is not patented in England within the meaning of the act of Congress until the complete specification has been enrolled."

1482 4th. I enclose my own affidavit shewing the date of my invention and the time I first made and sold the fabric in question, and

this is corroborated by the other affidavits. In view of these facts it is believed that my reissue should be immediately granted, and it is evident that these views prevailed in the mind of Hon. Commissioner in extending said patent, and in the mind of the examiner in reporting thereon, because the references given in official letter of 6th inst. were not mentioned.

Respectfully, yours,

WILLIAM SMITH,
Per L. W. SERRELL, *Att'y.*

Hon. T. C. THEAKER.

Affidavit of J. Reade.

In the matter of reissue of W'm Smith's patent April 5th, 1853, and extended, for improvement in weaving.

CITY AND COUNTY OF NEW YORK, *ss:*

JOHN READE, being duly sworn, says that he is a manufacturer of boots and shoe, at the corner of Ann and Nassau street, in the above city.

And this deponent further says that he has been in the above business for the last thirty-eight years, and has known William Smith for the last seventeen years, and has known and heard of the patent of William Smith during the whole term of his patent.

And very early in the year 1850 this deponent was connected with George Hall, at 233 Broadway, in the city of New York, and that this deponent bought elastic gussett-webbing for gores for Congress boots of the aforesaid William Smith, made according to the patent of the said William Smith.

JOHN REID.

Sworn before me the tenth day of May, A. D. 1867.

CHA'S H. SMITH,
Notary Public.

1483

U. S. PATENT OFFICE,
May 20th, 1867.

SIR: The specification in your application for reissue of your patent for weaving corded fabrics is herewith returned, and your attention is called to new matter in the same not found in the original patent, and which cannot be admitted in this.

In view of the affidavits submitted, this office, as at present advised, will not object to the allowance of your claim as presented when the new matter in the description shall have been erased.

7
G.

WILLIAM SMITH (L. W. Serrell), New York.

NEW YORK, *May 22d*, 1867.

SIR: I hereby amend the specification of my application for reissue of my patent for imp't in weaving, in compliance with official letter of 20th inst., as follows:

By striking out the words "it will be evident," line 18, page 6.

By striking out the 19th, 20th, 21st, and 22nd lines on page 6 entirely.

WILLIAM SMITH,
Per L. W. SERRELL.

Hon. T. C. THEAKER.

NEW YORK, *May* 31, 1867.

J. B. STAPLES, Esq.:

DEAR SIR: In consequence of M'r Serrell being out of town, you may take what action you think proper in the matter of my application for the reissue of my patent, subject to the approval of M'r Lemuel Serrell, my solicitor and attorney.

Yours, respectfully,

WILLIAM SMITH.

WASHINGTON, *June* 1, 1867.

Hon. Commissioner of Patents:

SIR: In pursuance of the authority within contained, and with a view to protect important interests of M'r Smith, the patentee,
1484 I request that all further proceedings upon the surrender and reissue of William Smith's patent for weaving corded fabrics, filed April 22, 1867, be suspended until further consideration and notice; which will be done through M'r Serrell, the agent on record.

Respectfully, yours,

I. B. STAPLES,
Counsel of M'r Smith.

NEW YORK, *June* 1, 1867.

SIR: In the matter of reissue of W'm Smith's patent on looms I have to advise that during my absence from business yesterday a question arose under which M'r Smith desired that the reissue be suspended, and he so requested through I. B. Staples, esq., who visited Washington to-day.

Upon a full discussion of the question to-day it has been decided to request that the reissue be granted as speedily as possible.

Attention to this matter will oblige,

Yours, respectfully,

LEMUEL W. SERRELL,
Att'y for W'm Smith.

Hon. T. C. THEAKER.

To the Honorable Commissioner of Patents:

The petition of William Smith, of the city, county, and State of New York, respectfully respesents:

That he did obtain letters patent of the United States for imp'ts in weaving, which letters patent are dated on the fifth day of April, 1853, and extended on the twenty-eighth day of March, 1867, and reissued on the eighteenth day of June, 1867; that he now believes the same are not fully operative, by reason of a defective specification, which defect has arisen from inadvertence or mistake.

He therefore prays that he may be allowed to surrender the same, and requests that new letters patent may issue to him for the same invention for the residue of the period for which the original patent was granted, under the amended specification herewith presented, he having paid thirty dollars into the Treasury of the United States,
1485 agreeably to the requirements of the acts of Congress in that case made and provided.

Respectfully, yours,

WILLIAM SMITH.

NEW YORK, N. Y., *September* 7, 1867.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

On this 7th day of September, 1867, before the subscriber, a notary public, duly appointed, personally appeared the within named William Smith, and made solemn oath that he verily believes that, by reason of an insufficient or defective specification, his aforesaid patent is not fully operative and available to him, and the said error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive invention, to the best of his knowledge or belief.

W'M SMITH.

Sworn before—

CHA'S H. SMITH,
Notary Public.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county, and State of New York, weaver, have invented, made, and applied to use certain new and usefull improvements in looms for weaving; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawing, making part of this specification, wherein—

Fig. 1 is a sectional elevation of the said loom;

Fig. 2 is a front view of the lay; and

Fig. 3 is a perspective view illustrating the mode of weaving the fabric that is formed by this loom. The like marks designate the same parts.

The object of this invention is to produce, by weaving, a fabric that has a centre warp enclosed on each side by weft threads held in place by interlaced warps.

The nature of this division of my said invention consists in an
1486 improvement in looms, whereby I am enabled to introduce a stationary warp and weave on both sides of it a fabric that firmly encloses it.

a is the frame of the loom of any convenient form, carrying the driving-shaft *b*, that is moved by any competent power. *c* are the connecting rods from cranks on the shaft *b* to the lay *d*, that is supported by and vibrates on a rock-shaft 1. 2 is a warp roller kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off, when at the required tension, as now practised.

The warp 3 is to be of India-rubber strips if the fabric is to be corrugated and elastic; or this warp may be cotton or any fibrous substance where a thick quality of goods is required.

This warp passed through the stationary heddles 4, and through the reeds *e* in the lay, over the breast beam *f*, the fabric as it is formed being wound by any usual means on the roller *g*. 5 is the warp roller supplying the warp 6 for the two sheds.

The warp passed through heddles 7 and 8, and through the reeds *e*, forming the fabric with the warp 3 and filling as hereafter shown.

The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends.

In the drawing these are shown as connected by straps 9, over a pulley 10, the straps 11 and 12 being connected from the under side to treadles to be worked by cams from an auxiliary shaft, or by the feet in the usual manner when power is not used.

The lay itself in front of the reeds *e* is shown as formed to recline two shuttles, having a centre piece, 13, with a rib on each edge, an upper

piece, 14, and a lower piece, 15, all attached to the body of the lay so as to receive and sustain the shuttles *h* and *i* by the riles taking grooves in the top and bottom of the back edge of the shuttle, and the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged.

The shuttles are propelled by means of a frame, *k*, with projections depending from the same to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame, *l*, and projections.

Figure 1 shows a means by which these frames may be moved. The ends of the top and bottom parts being connected by straps over pulleys so that one travels one way while the other travels in the oppo-
1487 site direction and by an ordinary picking motion, if in a power loom, or the usual strap for a hand loom, applied to move either frame, the shuttles are thrown in opposite directions through the sheds above and below the warp 3.

This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time. I wish it to be distinctly understood that I do not limit myself to the means for moving the shuttles. As instead of the frames *k* and *l*, racks may be used that in their motion rotate pinion wheels fixed on the lay that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed, even if the motion be not sudden enough to throw the shuttle, or both shuttles may be thrown through the sheds in the same direction at the same time.

The two shuttles carry bobbins with filling as usual, and the loom in working forms a fabric as shown in large size in Fig. 3, the warps 6 passing up and down through the stationary centre warp 3. The filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the upper shuttle *i* forms a fabric one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the under side.

Thus the warp 3 is enclosed, and in weaving India-rubber elastic goods my loom and mode of weaving are especially useful, and have advantages over other looms, for the following reasons, which reasons apply to a certain extent to the weaving of other fabrics than India rubber:

1st. When a warp of India rubber has been enclosed in a woven fabric it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it, the warp and filling interlacing on each side of the rubber cord and forming a woven pocket for the said cord.

In this mode of weaving the fabric has ribs produced on the surface, caused by the India rubber in raising or lowering imbedding itself, leaving the India-rubber thread loose within the woven covering which is raised on each side, but by my arrangement the India rubber being stationary, but a slight rib is formed on the surface of the goods and
1488 the rubber is held tightly by the warps and is not liable to draw into the fabrics at its ends when said fabric is cut crosswise of the rubber.

2nd. When two shuttles have been used with different or the same kinds of filling, one passes through the shed and then the India rubber raised up to let the second shuttle pass beneath it.

This produces the same imperfections in the goods that are manufactured.

3rd. With both the foregoing old methods for weaving elastic goods,

the India rubber being moved against the surfaces and edges of the reeds is subject to constant wear and friction, often breaking the India-rubber warp, whereas in my loom, the rubber remaining stationary, is not subject to so much wear.

4th. By using two shuttles, as herein shown, a saving of time is effected, because under the old method first one side was formed and then the other of the fabric. My method requiring but about half the time, thereby producing a corresponding saving in cost.

5th. Where but one shuttle is used in weaving elastic fabrics an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

I do not claim two shuttles, as two or more have been used in various kinds of weaving.

But what I claim and desire to secure by letters patent is the heddle or its equivalent for supporting the stationary central warps in combination with mechanism substantially as set forth for performing the weaving.

In witness whereof I have hereunto set my signature this seventh day of September, A. D. 1867.

W'M SMITH.

Witnesses:
GEO. DENNETT WALKER.
CHA'S H. SMITH.

1489 NEW YORK, *Dec.* 24, 1867.

SIR: I have to request that in the matter of my patent on looms for weaving the reissues of the divisions A and C may be granted without further delay for action on division B.

Early attention will oblige,
Yours, respectfully,

W'M SMITH,
Per L. W. SERRELL,

Attorney.

Hon. COM'R OF PATENTS.

Reissue. Div. C. No. 2844. William Smith, of New York, county of New York, State of New York. Weaving corded fabrics.

Received Sept. 10, 1867. Petition. Affidavit. Specification. 1 drawing.

Old patent in div. A.

Cer. dep. $30, Sept. 10, 1867. Cash.

2 examined, G. W. Gregory, Dec. 23, 1867.

3 issue, A. M. Stout, Jan. 3, '68.

Patented April 5, 1853, extended 7 years.

And reissued June 18, 1868.

Reissued Jan. 14, 1868.

L. W. SERRILL,
New York, N. Y.

1490 *Certified copy, No.* 12.

The United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the files of this office, of the file and contents in the matter of the letters patent granted William Smith, April 5th, 1853, extended 7 years, and reissued June 18th, 1867, No. 2656. "Imp't in weaving corded fabrics."

In testimony whereof, I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.]

SAM'L S. FISHER,
Commissioner.

To the Commissioner of Patents:

The petition of William Smith, of the city, county and State of New York, respectfully represents:

That he did obtain letters patent of the United States for an imp't in weaving corded fabrics, which letters patent are dated on the fifth day of April, A. D. 1853, and extended for the term of seven years on the twenty-eighth day of March A. D. 1867. That he now believes that the same are inoperative and invalid by reason of a defective specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender the same, and requests that new letters patent may issue to him for the same invention, for the residue of the period for which the original patent was extended, under the amended specification herewith presented, he having paid thirty dollars into the Treasury of the United States, agreeably to the requirements of the acts of Congress in that case made and provided.

WILLIAM SMITH.

NEW YORK, *April 20th*, 1867.

1491 CITY, COUNTY AND STATE OF NEW YORK, *ss:*

On this twentieth day of April, A. D. 1867, before the subscriber, a notary public, personally appeared the above named William Smith, and made solemn oath that he verily believes that by reason of an insufficient or defective specification, his aforesaid patent is not fully valid and available to him, and that the said error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

WILLIAM SMITH.

Sworn before me.

CHA'S H. SMITH,
Notary Public.

To all to whom these presents may come:

Be it known that I, William Smith, of the city, county and State of New York, weaver, have invented, made and applied to use, certain new and useful improvements in weaving, and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the annexed drawing making part of this specification, wherein

Fig. 1 is a sectional elevation of the loom.

Fig. 2 is a front view of the lay, and

" 3 is a perspective view, illustrating the mode of weaving the fabric that is formed by this loom. The like marks designate the same parts

The object of my invention is to furnish means for weaving fabrics formed by a center warp of india-rubber for corrugated elastic goods, or any similar warp which is enclosed by a fabric formed on each side of it.

The nature of my said invention consists in weaving elastic and other fabrics with a stationary warp enclosed in a fabric woven on each side of such stationary warp and forming the surfaces of the material.

a is the frame of the loom of any convenient form carrying the driving shaft *b*, that is moved by any competent power. *c* are the connecting rods from cranks on the shaft *b* to the lay *d*, that is supported by
1492 and vibrates on a rock shaft 1. 2. is a warp roller kept from turning freely by the friction of a strap or any usual means, so that the warp 3 is given off when at the required tension as now practiced.

The warp 3 is to be of india-rubber strips, if the fabric is to be corrugated and elastic, or this warp may be cotton or any fibrous substance, where a thick quality of goods is required. This warp presses through the stationary heddle 4 and through the reeds *e* in the lay over the breast beam *f*, the fabric as it is formed being wound by any usual means on to the roller *g*. 5 is the warp roller supplying the warp 6 for the two sheds.

The warp passes through heddles 7 and 8, and through the reeds e, forming the fabric with warp 3 and filling as hereafter shown.

The heddles 7 and 8 are worked by any competent means, the one being fitted to ascend as the other descends.

In the drawing these are shown as connected by straps 9, over a pulley 10, the straps 11 & 12 being connected from the underside to treadles to be worked by cams from an auxiliary shaft, or by the feet in the usual manner when power is not used.

The lay itself in front of the reeds *e* is shown as formed to receive two shuttles having a center piece 13 with a rib on each edge, an upper piece 14 and a lower piece 15, all attached to the body of the lay so as to receive and sustain the shuttles *h* and *i* by the ribs taking grooves in the top and bottom of the back edge of the shuttle, and, the length of the shuttle being greater than the width of the reeds, one end enters the groove before the opposite end is disengaged.

The shuttles are propelled by means of a frame *k* with projections depending from the same to give the blow and propulsion to the upper shuttle, and the lower shuttle is moved by a similar frame *l* and projections.

Fig. 1 shows a means by which these frames may be moved, the ends of the top and bottom parts being connected by straps over pulleys so that one travels one way, while the other travels in the opposite direction, and by an ordinary picking motion if in a power loom, or the usual strap for a hand loom, applied to move either frame, the shuttles are thrown in opposite directions, through the sheds above and below the warp 3.

1493 This loom is especially intended for use in weaving corrugated elastic fabrics, several pieces being woven at the same time.

I wish it to be distinctly understood that I do not limit myself to the means for moving the shuttles, as, instead of the frames *k* & *l*, racks may be used that in their motion rotate pinion wheels fixed on the lay that take a rack in the side of each shuttle, one pinion taking hold of one end of the shuttle before it clears the other pinion, thus drawing the shuttle through the shed even if the motion be not sudden enough to

throw the shuttle; or both shuttles may be thrown through the sheds in the same direction at the same time.

The two shuttles carry bobbins with filling as usual, and the loom in working forms a fabric as shown in larger size in Fig. 3, the warps 6 passing up and down through the stationary center warp 3, the filling from the upper shuttle *i* forms a fabric on one side of the warp 3, while the filling from the lower shuttle *h* forms a fabric on the underside; thus the warp 3 is enclosed, and in weaving india-rubber elastic goods, my loom and mode of weaving is especially useful, and has advantages over other looms, for the following reasons, which reasons apply to a certain extent to the weaving of other fabrics than india-rubber.

1st. When a warp of india-rubber has been enclosed in a woven fabric, it has been done by one shuttle passing over and depositing its filling, the rubber then being raised and the shuttle passing beneath it. In this mode of weaving, the fabric has ribs produced on its surface caused by the india-rubber in raising or lowering, imbedding itself in the filling or woof, leaving the india-rubber thread loose within its covering, which is raised on each side, but by my arrangement, the india-rubber being stationary, but a slight rib is formed on the surface of the goods, and the rubber is held tightly and is not so liable to draw into the fabric at its ends when said fabric is cut crosswise of the rubber.

2nd. Where two shuttles have been used with different or the same kinds of filling, one has passed through the shed and then the india-rubber been raised up to let the second shuttle pass beneath it; this produces the same imperfections in the goods that are manufactured.

3d. With both the foregoing old methods for weaving elastic goods, the india-rubber being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the
1494 india-rubber warp, whereas in my loom, the rubber, being stationary, is not subject to so much wear.

4th. By using two shuttles, as herein shown, a saving of time is effected, because under the old methods first one side was formed and then the other of the fabric, my method requiring but about half the time, thereby producing a corresponding saving in cost. (It will be evident, however, that the stationary warp may be used and one shuttle raised and lowered at opposite ends of its motion, with the results before mentioned, except as to the rapidity of weaving.)—Erase A, filed May 23, 1867.

5. Where but one shuttle is used in weaving elastic fabrics, an expense is incurred which can be saved by my loom, as these fabrics are usually formed entirely with silk, while in mine I can use silk from one shuttle to form the side which is seen, while a filling of cotton or similar fabric from the other shuttle may form the under side, thereby saving much cost for material.

I do not claim two shuttles, as two or more have been used in various kinds of weaving, but what I claim and desire to secure by letters patent is the process herein specified of weaving, consisting in the use of stationary warps in combination with moving warps, and filling that *form* a fabric on each side of such stationary warps, substantially as set forth.

Dated this twentieth day of April, A. D. 1867.

WILLIAM SMITH.

Witnesses:
CHA'S H. SMITH.
GEO. D. WALKER.

U. S. PATENT OFFICE,
May 6, 1867.

SIR: Your application for reissue of patent No. 9653, granted to you April 5, 1853, for improvements in weaving, has been examined and is refused. For anticipations of your invention, see English patents to Heywood, No. 12768, year 1849; Sievier, No. 13650 for 1851; Nickles et al. No. 13880 for 1851.

G. W. G.

WILLIAM SMITH (L. W. Serrell, N. Y.).

1495 In the matter of reissue of W'm Smith's patent of April 5, 1853, and extended, for imp. in weaving.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

CLARK W. CARY, being duly sworn, says that he is a merchant, doing business at No. 8 Spruce street, in the city of New York. He has had a store for shoe findings and for the sale of elastic webbing for Congress boots for the last (17) seventeen years, and has known W'm Smith during the above period.

And this deponent further says that during the year 1850 he had a store in Pearl street, in the city of New York, for the sale of shoe-findings and elastic webbing for gores for Congress boots. That early in the spring of 1850 this deponent bought elastic webbing of the above-stated William Smith, the same being woven with a fabric on each side of and enclosing the rubber warps.

[SEAL.] CLARK W. CARY.

Sworn before me this eleventh day May, 1867.

CHA'S H. SMITH,
Notary Public.

Reissue. No. 2656. William Smith, of New York, county of New York, State of New York. Weaving corded fabrics.

Rec'd April 22, 1867. Petition. Affidavit. Specification. 1 Drawing. Cert. cop. Model old pat.
1 cert. dep., $30, April 22, 1867.
Cash.
Add'l fee cert. Cash.
Examined Geo. W. Gregory, May 29, 1867.
2. Issue. A. M. Stout, May 30, 1867.

1496 3. Patented April 5, 1853. Reissued June 18, 1867. Extended 7 years.
Recorded vol. , page .
Circular.

L. W. SERRELL,
New York, N. Y.

Rejected May 6, 1867.
Spec'n rec'd May 20, 1867.

Certified copy No. 13.

Certified copy of letters patent granted William Smith, dated April 5, 1853, is embraced in the following exhibit, marked Certified Copy No. 14.

Certified copy No. 14.

United States Patent Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted W'm Smith April 5th, 1853, No. 9653, and of the certificate of extension granted March 28th, 1867.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States the ninety-first.

[L. S.] T. C. THEAKER.

1497 No. 9653.

The United States of America. To all to whom these letters patent shall come:

Whereas William Smith, of New York, N. Y., has alleged that he has invented a new and useful improvement in weaving corded fabrics, which he states has not been known or used before his application, made oath of his intention to become a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said William Smith, his heirs, administrators, or assigns, for the term of fourteen years, from the fifth day of April, one thousand eight hundred and fifty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of the said Smith, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fifth day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America the seventy-seventh.

Countersigned and sealed with the seal of the Patent Office.

[L. S.] R. McCLELLAND,
Secretary of the Interior.

R. C. WEIGHTMAN,
Acting Commissioner of Patents.

1498 The schedule referred to in these letters patent, and making part of the same.

To all to whom these presents may come:

(Here follows the specification in the same words as the specification in "Certified copy No. 6," and printed on pages 31, 32, 33, and 34 of this record, except that the words in brackets on page 34 are omitted. This specification being once printed is not reprinted.)

Whereas upon the petition of William Smith, of New York, New York, for the extension of the patent granted to him, April 5, 1853, the undersigned, in accordance with the eighteenth section of the act of Congress approved the 4th day of July, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose"; and the act approved the 27th day of May, 1848, entitled "An act to provide additional examiners in the Patent Office, and for other purposes"; did, on this 28th day of March, 1857, decide that said patent ought to be extended:

Now, therefore, I, Thomas C. Theaker, Commissioner of Patents, by virtue of the power vested in me by said acts of Congress, do renew and extend the said patent, and certify that the same is hereby extended for the term of seven years, from and after the expiration of the first term, viz, from the 5th day of April, 1867; which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

And it appearing from evidence on file in this office that the original of said patent cannot now be produced, it is directed that this certificate of extension be entered on a certified copy of said patent.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed this 28th day of March, 1867, and of the Independence of the United States the ninety-first.

[L. S.] T. C. THEAKER,
Commissioner.

1499 *Certified copy No.* 15.

Divisions A & C of reissued letters patent to William Smith, dated January 14, 1868, are printed with complainant's proofs.

Present, M'r Smith, the complainant, personally; Benjamin Dean, esq., counsel for respondents.

FEBRUARY 21, 1870.

M'r Dean, of counsel for respondents, here puts in evidence certified copy from the Patent Office of the "File and contents in the matter of withdrawn application of Julius Hotchkiss, filed August 23rd, 1844, and four letters from the records relating to the same," marked Respondents' Exhibit ⟨A⟩; also a piece of the original specimen in the matter of the application of Julius Hotchkiss, supposed to have been filed Aug. 23, 1844, for "a fabric or elastic cloth web," certified from the Patent Office, and marked Respondents' Exhibit ⟨B⟩; also a piece of elastic fabric, marked Respondents' Exhibit ⟨C⟩.

(Complainant reserves his right to object to the above testimony, and to the admission thereof.)

MARCH 8, 1870.

Complainant objects to the introduction of Exhibit ⟨C⟩, N. A. P., Ex'r, as it is not stated by the defendants what use is intended to be made of such exhibit, and the same does not represent or bear upon the

evidence already introduced; nor has the counsel for the defendants signified the purpose or intention of the use he intends to make of said exhibit; but said exhibit does not represent any evidence upon the record, and the complainant objects to its meaningless introduction.

1500 *Respondents' Exhibit* ⟨A⟩.

The United States Patent Office to all persons to whom th'se presents shall come, greeting:

This is to certify that the annexed is a true copy from the files and records of this office of the file and contents in the matter of withdrawn application of Julius Hotchkiss, filed August 23, 1844, and four letters from the records relating to the same.

Fabric, or elastic cloth web.

In testimony whereof I, Samuel S. Fisher, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

SAM'L S. FISHER,
Commissioner.

To the Commissioner of Patents:

The petition of Julius Hotchkiss, of Waterbury, in the county of New Haven and State of Connecticut, respectfully represents:

That your petitioner has invented a new and useful shape or configuration of elastic cloth or web, which he verily believes has not been known or used prior to the invention by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting to him and his legal representatives the exclusive right to the same upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and complied with other provisions of the said act.

Waterbury, Conn., 20th August, 1844.

JULIUS HOTCHKISS.

1501 To all whom it may concern:

Be it known that I, Julius Hotchkiss, of Waterbury, in the county of New Haven and State of Connecticut, have invented a new and improved form, shape, or configuration of elastic cloth or web. And I do hereby declare that the following is a full and exact description:

The nature of my invention consists in inserting India-rubber cord of suitable dimensions and at suitable distances from and parallel with each other, with the warp of said web or cloth, so that the fabric when woven with light filling or weft, and the elastic cords have shrunk or contracted, will itself contract, shir, or pucker in such a manner as to form a web, cloth, or other fabric of as great strength and greater elasticity than is or can be acquired by the use of a similar quantity of elastic material in smaller cords and at smaller intervals, without producing the shir or pucker.

To enable others skilled in the art to make and use my invention, I will proceed to describe the mode of its construction or manufacture. When preparing to weave the fabric, I insert among the warp a sufficient quantity of India-rubber cord to give sufficient elastic strength to he fabric for which it is intended. But in order to give the fabric, when

finished, greater elasticity than it would otherwise acquire by inserting the elastic cords among the warp, at small distances from each other, and of finer size, I increase the size of the cords and place them at greater distances from each other, varying according to the object for which the fabric is designed, and the fancy of the manufacture, from ($\frac{1}{8}$) one-eighth of an inch to ($\frac{1}{2}$) one-half an inch in distance, so that when woven the fabric will contract, shir, or pucker, as shown in the accompanying sample, with my name attached thereto: these elastic cords, instead of being fine and placed equidistant and nearly contiguous to each other, according to the elastic quality of the goods, as heretofore made, are by me, in the invention here described, either from three to eight times as large, or from three to eight cords or strands united in one, and placed in the woof at distances usually as much asunder as their size is increased, and in this way a texture of unequal thickness is formed, and by the contraction of the elastic cords the shir or pucker is effected.

1502 What I claim as my invention and desire to secure by letters patent is the introduction of larger elastic cords and placing them at such distances from each other as, when woven and contracted, to create a shir or pucker in the texture, which, while it retains the same elastic strength in the fabric, imparts a much greater elastic scope. I do not claim as my invention the discovery of making shirred or puckered goods by elastic cords; but I do claim as my discovery the art of introducing into the warp of the texture and of weaving into the fabric elastic cords of such sizes and at such distances as, when woven, it will shir or pucker.

JULIUS HOTCHKISS.

Witnesses:
GREEN KENDRICK.
AAMON BENEDICT.

COUNTY OF NEW HAVEN,
State of Connecticut, ss:

On this 20th day of August, 1844, before the subscriber, a justice of the peace within and for said county, personally appeared the within-named Julius Hotchkiss and made solemn oath that he verily believes himself to be the original and first inventor of weaving shirred elastic goods, and that he does not know or believe the same was ever before known or used, and that he is a citizen of the United States.

JULIUS HOTCHKISS.

Before me.

ALFRED BLACKMAN,
Justice of the Peace.

P. O., *Aug.* 23, 1844.

JULIUS HOTCHKISS, Esq.,
Waterbury, Conn.:

Circular H receipt of your petition, specification, and specimen of your alleged improvement in weaving elastic goods, with a receipt for $30, in its order.

P. O., *Oct.* 7, 1844.

SIR: Yours of the 2nd ins't is received; and in reply I would state that your application is before the examiners and will be acted on in a day or two. Of the result you will be duly advised.

M'r JULIUS HOTCHKISS,
Waterbury, Conn.

1503 P. O., *Oct.* 12, 1844.

SIR: Your application for a patent for a new fabric has been examined, and your claims found not to present anything which can constitute a legitimate claim to a patent. Simply increasing the size of the cords of India rubber, or their distance apart from each other, is not an invention within the meaning of the law.

Your application is herewith returned to enable you to remodel your claim should you on reflection conclude that your present claim does not cover your invention.

M'r JULIUS HOTCHKISS,
Waterbury, New Haven Co., Conn.

WATERBURY, *Oct. 24th*, 1844.

DEAR SIR: Yours of 21st is received. Enclosed are the paper returned from the office; also $10, which you may need in procuring and for protecting and remodeling my papers.

Yours, respectfully,

JULIUS HOTCHKISS.

To D'r CHA'S G. PAGE.

P. O., *Nov.* 19, 1844.

SIR: Your application for a patent for an alleged improvement in the mode of making elastic cloth, &c., has been examined and found not to present anything new, as will be seen by reference to a patent granted in England to R. W. Seivier on the 17th January, 1833, and published in the London Journal of Arts and Sciences, vol. 3rd, conjoined series, page 65, and therefore a patent cannot be granted to you.

You may elect to withdraw your application and receive back $20 of the money paid in by you, or prosecute your claim in the manner pointed out in the enclosed circular.

M'r JULIUS HOTCHKISS,
Waterbury, New Haven Co., Conn.

1504 P. O., *Nov.* 17, 1844.

SIR: The examiner who has charge of your case has informed me that you had been anticipated in your invention, and upon consulting the reference I see no possibility of sustaining a claim under the circumstances. Had your case required any attention to meet the usual requirements of the office, the sum you forwarded would have been refunded accordingly; but as it is, the amount, ten dollars, is herewith returned to you, according to request of D. Payne, one of the examiners.

JULIUS HOTCHKISS,
Waterbury, New Haven Co., Conn.

WATERBURY, *Nov. 25th*, 1844.

SIR: I have abandoned my intention of procuring a patent for weaving india-rubber goods. The amount of $20, which, as per your advice of the 19th inst., would in this case belong to me, please return by mail.

Yours, respectfully,

JULIUS HOTCHKISS.

To Hon. H. L. ELLSWORTH,
Commissioner of Patents, Washington.

To the Commissioner of Patents:

SIR: I hereby withdraw my application for a patent for weaving

elastic goods now in your office, and request that twenty dollars may be refunded to me, agreeably to an act of Congress in such cases made and provided.

JULIUS HOTCHKISS.

WATERBURY, *Dec. 4th*, 1844.

Please date, sign, and return the above receipt to this office, and a check for twenty dollars will be transmitted.

H. L. ELLSWORTH,
Commissioner of Patents.

M'r JULIUS HOTCHKISS,
Waterbury, Conn.

1505 Julius Hotchkiss, town of Waterbury, county of New Haven, State of Connecticut.

A fabric, or elastic cloth or web.

Rec'd Aug. 23, 1844. Petition. Affidavit. Specification. Drawing. Model specimen. Treasurer's certificate. $30 R., rec'd Aug. 23, 1844. Examined. Issue. Patented , 184 . Recorded vol. , page .
P. O., 7th December, 1844. Sent receipt 29th November, 1844.

1506 UNITED STATES OF AMERICA,
Massachusetts District, ss:

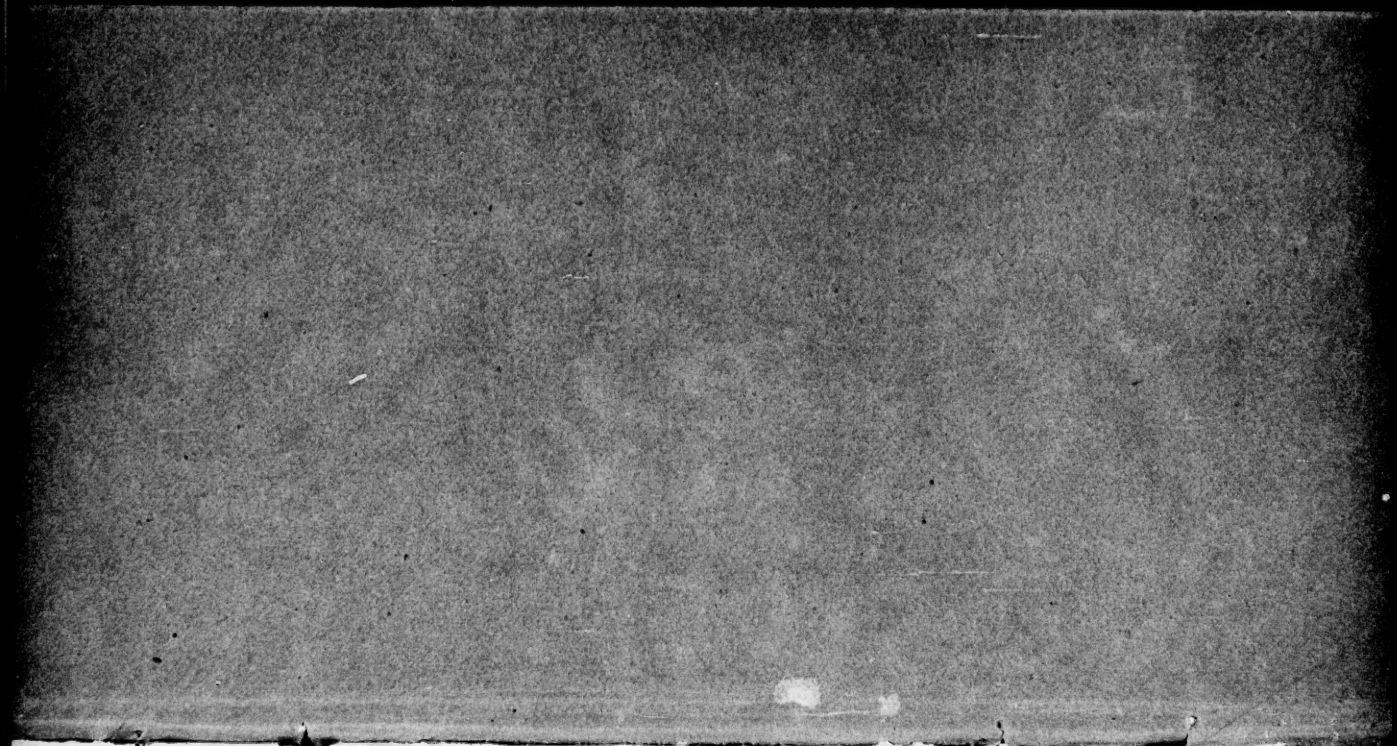
I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the evidence for defendants used at the hearing of the cause of William Smith, complainant, v. Glendale Elastic Fabrics Company, defendants, in said circuit court determined.

And I further certify that two accompanying volumes, having
1507 my certificate of even date herewith annexed to each, one entitled "Vol. I, Pleadings, Decrees, etc."; and the other, entitled "Vol. II, Evidence for Complainant"; and this volume, entitled "Vol. III, Evidence for Defendants"; together contain a true copy of the record and of all proceedings in said circuit court in said cause.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

JOHN G. STETSON, *Clerk.*

(Indorsement on cover:) No. 264. The Glendale Elastic Fabric Company, appellant, vs. William Smith. Massachusetts C. C. U. S. Filed 16th October, 1876.



Bring

Nov. 4 79. Aug

United States Supreme Court.

NO. ~~201~~ 44 OCTOBER TERM, ~~1878~~ 1879

GLENDALE ELASTIC FABRICS COMPANY, APPELLANT,

vs.

WILLIAM SMITH.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court of the District of Massachusetts.

There were several suits brought by the appellee in the Southern District of New York, and two in the District of Massachusetts.

The original patent, No. 9,653, was issued April 5, 1853. Extended seven years.

The appellee's patent was finally reissued in three parts; viz., Divisions A, B, and C.

Division A, No. 2,843, dated Jan. 14, 1868 (p. 48), is "for the process herein specified of weaving, consisting in the use of stationary warps, in combination with moving warps and filling that enclose such stationary warps, substantially as set forth."

Division B, No. 3,014, dated June 30, 1868 (p. 51), is for the "corded fabric, substantially as herein before described, in which the cords are elastic, and are held between the upper and under weft-threads, and separated from each other by the interweaving of the upper and under weft-threads with the warp-threads in the spaces between the cords, *and only there*, substantially as above shown."

Division C, No. 2,844, dated Jan. 14, 1868 (p. 54), is for the "Heddle, or its equivalent, for supporting the stationary central

warps, in combination with mechanism substantially as set forth for performing the weaving."

The suits in the Southern District of New York were heard and decided by Judge Woodruff. The decision was adverse to the patent; the case is reported 9 Blatch. C. C., Report (p. 400).

One of the suits in Massachusetts was heard and determined by Justices Clifford and Lowell, and decided against the patent. It was brought to this Court, and was again decided against the patent.

Smith *vs.* Nichols 21 Wal., 112.

The infringement in those suits was the use and sale of the corded fabric described in Division B.

This suit is for the alleged infringement of Divisions A and C.

The bill was filed Nov. 19, 1868. Feb. 13, 1874, there was a decree for an injunction and account (p. 9), and referred to a master. The master reported no profits.

All the evidence was taken in six cases,—four pending in New York, and two in Massachusetts. The evidence was filed in the New York cases, and only there. By consent of the Massachusetts defendants, the complainant was permitted to file a certified copy of the New York testimony in the Massachusetts Circuit Court, and contended that the complainant could only recover, as costs of such testimony, the cost of the certified copy; but the master allowed, in addition to the cost of such certified copy, one-sixth of the cost of taking such testimony. To this the defendants objected.

The Court affirmed this finding of the master. (See pp. 43, 44, 45, 46.)

The defendant also (see p. 46) objected to the plaintiff being allowed costs because of the disclaimer of the plaintiff (see p. 54).

The Court overruled said objection (p. 46).

The answer of the defendant —
Denies novelty.
Denies infringement.
Denies legality of the reissues.

The defendant claims —
Patent invalid for want of patentability.
Patent invalid for want of novelty.
Patent invalid for want of legality of reissue.

Also that plaintiff not entitled to costs by reason of disclaimer. And if entitled to costs, only to one hundred dollars, being one-half of certified copy of evidence.

I.

Of the three Divisions, A, B and C, B was disposed of by the decision of this Court in Smith *v.* Nichols, 21 Wallace, 115.

It is respectfully submitted that said decision also disposes of Division A. Division B could not be made without the process of Division A.

As the product can only be obtained by a single process, the existence of the product proves the existence of the process.

If there is any difference in process between the making of a fabric by causing the cords to rise and fall in the formation of the shed, both methods were old.

What, then, is his Division C? He doesn't claim as new anything but the stationary heddle. He describes his loom in detail, but he doesn't claim any part of it as new except the stationary heddle.

His claim in Division C is not for a stationary heddle in combination with any new device or loom, nor even with the particular mechanism described by him in his specification; it is for the "heddle or its equivalent, for supporting the stationary standing warps, *in combination with mechanism* substantially as set forth for performing the weaving."

If the stationary heddle were new in weaving, and the patent for its use valid, it certainly will not be contended that it could be used regardless of the patent in any other loom than the described loom.

In other words, the patent is for the use of a stationary heddle in weaving.

It is a patent for the right, while weaving, to permit one of the heddles to remain stationary.

If such a patent is valid, then a patent may be obtained for every pattern of cloth manufactured, for every pattern requires a particular adjustment and modification of the heddles which regulate the positions of the warp threads.

Such a patent would strike at the foundation of all weaving.

Any designer of a new pattern, whether of a carpet or any of the various patterns of raised or other weaving, could go to the Commissioner of Patents and say, I want a patent for these particu-

lar positions of the warp threads, — describing the positions as the weaving goes on, — said positions producing a new and valuable pattern or figure.

Other considerations affecting the validity of the patent will be found towards the end of the brief.

The plaintiff was not the first inventor.

Ferdinand Doebley (pp. 583, 584, 585) testifies that his father used the same means and process, in 1843, in the manufacture of shoe-goring and suspender-web. He gives an account of the way in which it became known to the parties that he knew of this manufacture.

Mr. Smith called upon him, being sent by Mr. Horstman and Mr. Thornley, and at that interview received from him a sample of shoe-goring made long before Mr. Smith's invention.

Of this there can be no question. Mr. Smith himself admits that Mr. Doebley gave him a sample of woven shoe-webbing before he left Philadelphia. This shoe-web was then undoubtedly made about the year 1843.

Smith's testimony, pp. 392, 397.

William I. Horstman (pp. 681 and 692) sent Mr. Smith to Mr. Doebley, "Solomon Doebley being the first man he knew of weaving elastic goods." He says Solomon Doebley was an ingenious man, and as early as 1844 he made suspender-web, having a silk face and cotton back, that is, with two shuttles, one working silk and the other cotton. Horstman's testimony is in corroboration of Doebley; shows that Solomon Doebley failed in 1850, and had been engaged extensively in making elastic webbing, and that Ferdinand Doebley, his son, was the person to look to for information.

Rudolph Braeger, who worked for Solomon Doebley, also corroborates Ferdinand Doebley in all essentials as to the fabric for shoe gaiters (Ans. 5 and 19); as to the number of shuttles (p. 666, ans. 104, 109, 110, 111).

He therein describes the two-shuttle loom in the same way as Doebley. He also says that goods with silk face and cotton backs were made.

He was there only two or three years, and left in 1846.

To throw discredit on Ferdinand Doebley, Mr. Smith makes a great effort.

He calls John Thornley (complainant's record, pp. 354 and 365.) But Thornley only proves that Solomon Doebley was engaged in making elastic webbing, and thus corroborates Doebley. He denies nothing that Doebley testifies to.

Philander J. Murray was called to contradict Doebley; but his testimony *proves* Doebley's correctness.

He testifies, in his direct examination (pp. 355 and 356), that Col. Murray purchased his first goring for Congress boots of Mr. Smith, and a suspender man, after 1850; and that none was used before.

On cross-examination (p. 356), he finds entries of Congress boots as early as May, 1847. All then used was woven goring, and all bought of the suspender man and Mr. Smith (pp. 358, 359, 360).

Now isn't it quite certain that the suspender man sold, as early as 1847, and that that man was Doebley? The plaintiff was trying to prove it to have been Doebley; the error was in not looking far enough back in the books, and it is to be regretted the other books could not have been obtained.

William Morris (pp. 366, 367), is called for the purpose of doing away with the effect of P. J. Murray's testimony. He left Col. Murray's employ in January, 1851, and as far as he says anything, certainly shows that Doebley is probably correct, for he admits different kinds of webbing were used in 1846, and after.

The plaintiff then takes the stand and testifies to just what he thinks will show that the "suspender man" (Solomon Doebley) didn't sell till 1854. He says (ans. 4, p. 369), that Col. Murray's nephews told him that a "suspender-maker had been round trying to sell cotton-elastic gored goods for Congress boots."

Now, if this story is not wholly a fabrication, and if anything of the kind was said, it was thus: when Mr. Smith went first to Philadelphia, he was informed that a suspender manufacturer had anticipated him. Otherwise, the information would have been unimportant and not remembered.

It would seem to be admitted that a suspender man did make and sell shoe-goring, and that man was Solomon Doebley.

Horstman says Solomon Doebley failed in 1850 (p. 694). Ferdinand Doebley shows conclusively that it was early in 1850 when his father failed (p. 655). See also note-book, in as an exhibit. He sold his last goods of any kind in 1852 (pp. 655, 673, ans. 23).

Perhaps enough has been said to show that the time when the plaintiff was told that a suspender-maker had been trying to sell woven shoe-goring was when he was first in Philadelphia. But he says it was early in 1854. Let us try his reliability.

On plaintiff's record (p. 297), he says his attention was first called to the fact that shoe-goring was imported, in 1855, by King & Co., on Washington Street in Boston, and that he first saw it in 1857 or 1858. Again he says Eabrey showed him some in 1854.

Creighton says Smith sold him some in 1848 and 1849.

Pages 567, 568. Also answers 27, 28, 58-60, 66. Also pp. 410 and 411.

The following witnesses prove that woven shoe-goring was so common an article that the plaintiff must have known it years earlier than he says, and that he cannot be relied upon :—

Thomas Corey, 642, 643; recalled, 645, for cross-examination.
Isaac Bannister, 644; recalled, 651, for cross-examination.
John P. Wakeman, 593; answer 13, and on p. 596, cross 53, 54, 55.
James Knott, 711.
Robert Knott, 720.
Samuel L. Johnson, 615.
John Helm, 617.
Amos D. Wykoff, 607.

The cross-examination of this last witness shows his reliability. The case was opened to let the complainant rebut his testimony, but he did not make the attempt.

Exhibit, Wakeman, 1, J. G., jr., examiner (p. 653), proposed agreement of Nov. 9, 1849, between plaintiff and Dodd & Wakeman, for the manufacture of elastic and other webbing *for boots*, suspenders, and other purposes.

Wakeman (pp. 693, 698), says the words in the agreement in writing actually made, that Mr. Smith should "guarantee that the goods named by him can be manufactured, equal in character and value to those at present imported," related to shoe-webbing.

See also agreement, p. 483, and reference therein to imported webbing.

Wakeman (p. 615) says Smith showed a piece of webbing, shaped like the letter V, and said he could make goods like it; but he didn't produce goods equal to the sample, nor like it.

Page 625 (answers 12 and 13), show it was understood that the web was then imported, and the desire was to make it.

Bethuel Dodd tells the same story (p. 555).

Adolph Marr, 374–380.
Henry Hilton, 381, 382, ans. 17.
Henry G. Gurney, 586, 590.
Charles McCoy Bagot, 591, 592.
Thomas Creighton, 567.

As bearing upon the fact that before the plaintiff's invention woven shoe-gores were getting into use, see plaintiff's witness, Winslow (p. 79, ans. 29, 30), wherein it appears that in 1847 and in 1848 Mr. Day and the witness Winslow went around to forbid the weavers of suspenders making shoe-gorings. Also Cutting's and Choate's opinion, dated April 26, 1851 (p. 82).

See also the certificate of W. L. Whiting, on p. 82, dated March 3, 1852, who, after "many years' experience," — by way of settlement with Day, — certifies to the superiority of Day's goods.

See also, Wilkins, pp. 533, 534. Cooper, p. 535.
Lorin Brooks, pp. 335, 340.

Webs for shoe-gores were used in England from 1842 to 1851;

Edwin B. Stimson, pp. 553, 554.

considerably in 1845 and 1846, and extensively in 1851.

The plaintiff left England in 1845.

John H. Buckley knew of Union web being made in England, with stationary and rubber warps, in 1847 and 1848.

Creighton saw gored shoes of an English lady a year or more before he bought of Smith (p 573, ans. 81). See Also p. 567. ans. 8.

Stimpson says the goods made in England were similar to the web now used for shoe-gores, excepting only Day's shirred goods, and the "terry." (Answers 9 and 10, p 554.)

Eabrey says the same (p. 576, ans. 11, 12, 13, p. 577). John H. Buckley.

See also the testimony of
Bagot, p. 591.
Johnson, 615, *et seq.*

Wilkins (ans., x 26, p. 697), says goods they imported in 1850 and 1851 were similar to Exhibit Y.

James Knott says similar to A. A., N. A. P. (p. 711).

Robert Knott says same (p. 722), and date of lease on p. 723, showing he used similar imported goods prior to 1840.

Exhibit 11. The narrow black garter-web is clearly within the disclaimers, and was made in 1848 and 1849. (Williams, p. 533, ans. 5.)

This testimony shows that the plaintiff was certainly well acquainted with the imported fabric long prior to his alleged invention. It was in use in England before he came to this country. It was much in use in this country, and he had pieces of it. This whole story of his invention is incredible.

His claim that he was the inventor of the fabric was wholly fraudulent, and his statements and claims to the process and stationary heddle is disproved.

Further as to the credit due to the plaintiff's testimony, see his testimony (pp. 392, 393).

Also testimony of

Doebley, pp. 654–657, 675.
Martin, p. 640.
Appenfelder, pp. 684, 658.

What was the purpose of the plaintiff in this mysterious attempt to get up a false sample of an old manufacture, cutting himself with shears, native rubber, an article long disused, and procuring the aid of persons ignorant of his purposes?

Enough has been said to show Doebley entitled to the fullest credit, — corroborated by Horstman and Braeger, his dates fixed beyond question, and himself introduced to both parties by a disinterested person.

In speaking of the looms used in 1840–2 and 3, in answer to Int. 10 (p. 583), he says: "The first loom that I speak of was, I think, for six webs. It was a narrow loom, and there were twelve shuttles in it; that is, there were two shuttles to each web."

Int. 11. Were the shuttle-boxes stationary, or did they move up and down? By shuttle-boxes I mean the grooves that held the shuttles; did they move up and down in order to have the shuttle opposite the shed, or were they stationary?

Ans. They were stationary; they did not rise or fall.

Int. 12. How were they propelled?

Ans. By rack and pinion.

Int. 13. Is that the ordinary way of propelling shuttles in weaving narrow fabrics?

Ans. It was with us, although we had a few looms that were propelled differently.

Int. 14. How was it with the rubber cords; were they stationary, or did they rise and fall?

Ans. The rubber warp, in the first loom I speak of, did not rise and fall; that is, the hand-loom.

Int. 15. Did it pass through a heddle?

Ans. No, sir.

Int. 16. What kept it stationary?

Ans. It was a frame or bar running across, that had eyes in it.

Int. 17. Did the rubber cords pass through the eyes in the frame or bar? See Also Ans. 24. p. 584
25 to 29. p 673.
49 to 54 p 676

Ans. Yes, sir.

Witness then says silk filling passed always on one side of the rubber cords, and the other shuttle on the other; that fibrous warp threads, sometimes as few as four, were between the rubber cords, and only there — the cords being covered by the filling only. This loom used two or three years. That they made some goods equal to any he had ever seen, and that they were sold in the market, and only discontinued the manufacture because it was not profitable.

This certainly presents an undoubted case of prior use; and a lengthy cross-examination, on p. 766, does nothing but confirm his previous testimony.

This certainly is not only an answer to Division A for the process, but also to Division C, which is for the "heddle, or its equivalent, for supporting the stationary warps, in combination with mechanism, substantially as set forth for performing the weaving."

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On p. 586, *et seq.*, Henry G. Gurney says he made elastic web, between 1847 and 1850, the rubber being held stationary by *a stationary heddle;* that two sheds were formed, one shuttle taking one filling, and the other another, and there were no other warp threads except between the rubber cords. On p. ~~650~~ 614-615, on cross-examination, he describes fully the use of stationary warps, and two shuttles used at the same time.

Charles McCoy Bagot corroborates Gurney, and also says a stationary warp, common in England 30 or 35 years ago. Deft's record, pp. 591, 592.

Bethuel Dodd (p. 604, ans. 4), corroborates Gurney.

John P. Wakeman, p. 600, corroborates Gurney.

John Eabrey, p. 576, knew of use of stationary warps in England in 1851.

If Division A is relied upon, the testimony shows the process to have been old.

But this division of the patent cannot be supported.

Corning *vs.* Burden, 15 How., 252.

As to Division C, it is plain that Doebley's machine contained a stationary warp, and also two rows of shuttles, capable of throwing two shuttles through two sheds existing at the same time: and Gurney's a stationary warp and two shuttles passing in opposite directions at the same time.

INFRINGEMENT.

There is no evidence of infringement of Division

The complainant says ~~(Pleadings and Complainant's~~ that he saw both shuttles passing through the web "simultaneously together;" but by what mechanism he doesn't say, and whether in the same or in opposite directions he doesn't say. The shuttles did not rise and fall, and there was a stationary warp.

He says that each shuttle "was made and constructed in exactly the same manner as in my specifications and drawings, and claim in my patent, Division A."

How were the shuttles propelled? The plaintiff describes two ways, by frames K and L, and by racks and pinions, such as Doebley used. Was either of these or some other method used? The witness doesn't say.

If by frames K and L, were they moved by the ordinary picking motion, or as in a hand-loom?

There is another decisive question.

Were all the rubber cords stationary? The patent requires all the rubber cords to be stationary. It says so over and over again in such terms as to be unmistakable. It refers to the drawings as part of the specifications, and they leave no doubt upon this question. It says: "The warp 3 is to be of India-rubber strips, if the fabric is to be corrugated and elastic." "This warp passes through the stationary heddles 4." "5 is the warp roller, supplying warp 6, for the two sheds."

"The two shuttles carry bobbins with filling as usual, and the loom, in working, forms a fabric, as shown in large size in Fig. 3, the warp 6 passing up and down through the stationary centre warp

Int. 17. Did the rubber cords pass through the eyes in the frame or bar?

See Also Ans. 24. p. 584
25 to 29. p 673.
45 to 54 p 676

Ans. Yes, sir.

Witness then says silk filling passed always on one side of the rubber cords, and the other shuttle on the other; that fibrous warp threads, sometimes as few as four, were between the rubber cords, and only there — the cords being covered by the filling only. This loom used two or three years. That they made some goods equal to any he had ever seen, and that they were sold in the market, and only discontinued the manufacture because it was not profitable.

This certainly presents an undoubted case of prior use; and a lengthy cross-examination, on p. 766, does nothing but confirm his previous testimony.

This certainly is not only an answer to Division A for the process, but also to Division C, which is for the "heddle, or its equivalent, for supporting the stationary warps, in combination with mechanism, substantially as set forth for performing the weaving."

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As to Division C, it is plain that Doebley's machine contained a stationary warp, and also two rows of shuttles, capable of throwing two shuttles through two sheds existing at the same time: and Gurney's a stationary warp and two shuttles passing in opposite directions at the same time.

INFRINGEMENT.

There is no evidence of infringement of Division B.

The complainant says (Pleadings and Complainant's Proofs p. 35), that he saw both shuttles passing through the web "simultaneously together;" but by what mechanism he doesn't say, and whether in the same or in opposite directions he doesn't say. The shuttles did not rise and fall, and there was a stationary warp.

He says that each shuttle "was made and constructed in exactly the same manner as in my specifications and drawings, and claim in my patent, Division A."

How were the shuttles propelled? The plaintiff describes two ways, by frames K and L, and by racks and pinions, such as Doebley used. Was either of these or some other method used? The witness doesn't say.

If by frames K and L, were they moved by the ordinary picking motion, or as in a hand-loom?

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"The two shuttles carry bobbins with filling as usual, and the loom, in working, forms a fabric, as shown in large size in Fig. 3, the warp 6 passing up and down through the stationary centre warp

3. The filling from the upper shuttle I forms a fabric on one side of warp 3, while the filling from the lower shuttle H forms a fabric on the under side. The India-rubber being stationary, but a slight rib is formed."

Again: "Third, with both the foregoing old methods for weaving elastic goods, the India-rubber, being moved against the surfaces and edges of the reeds, is subject to constant wear and friction, often breaking the India-rubber warp; whereas in my loom, the *rubber remaining* stationary is not subject to so much wear."

This shows that all the rubber cords, including the selvage cords, are stationary. If the selvage cords were not stationary they would, according to this description, wear and break, which would be fatal to this purpose of the patent.

The drawings give but two moveable heddles, and they contain the fibrous warps. In Division B, and also in the original patent, it is stated that "each weft thread passes *either over or under all the cords;*" also "which two weft threads are drawn each half way around each one *of all the cords.*" Now, it is a singular fact that the record and exhibits show no samples of shoe-webbing not having an elastic selvage cord. These may well be made with all the cords stationary if the web is a single web, because the weft thread goes entirely around the rubber warps.

But Union web with silk face and cotton back — *i. e.*, with one weft thread passing to and fro on one side of the rubber cords and one on the other — cannot be so made. None of that class of exhibits can be so made. In all of them a part of the rubber cords, viz., the selvage cords, must rise and fall.

Now, "a specification to be valid must be such as, when fairly followed out by a competent workman, without invention or addition, the object of the patent may be obtained."

Curtis on Patents, p. 156.

The specifications in this case, fairly followed out, would not make any sample of Union web known to the case. In fact, all the

evidence shows that the plaintiff looked upon webs with the selvage cord elastic as infringements of his patent; though the specifications do not admit the making of a Union gore with elastic selvage cords.

If the selvage cords are elastic, and rise and fall as to them, we should expect to find all the evils deprecated by the patent: that they would wear and break by contact with the reeds and harness; that they would embed themselves in the weft, make ribs, and cause corrugation, etc.

No other than a fabric with a frilled selvage might be made and all the rubber cords remain stationary and enclosed by the upper and under weft threads.

But the complainant, on pp. 229, 230, 243, 248, describes a selvage as made according to his patent, which cannot be so made. He describes a selvage requiring changes from his patent amounting to invention and discovery.

He inserted a piano wire because the cord was elastic; which would not be required if all the cords were stationary and the selvage cords fibrous. He didn't have any interlocking of the warp to make a round selvage; nor was there a frilled selvage. He claims his selvage to have been new at the time, and that he had never seen any such as his until May, 1869.

Its peculiarity was, having had a wire in it and covered only by the weft.

Plaintiff, on p. 248, cross 196, 197, 198, says the two weft threads went sometimes around the outer selvage cord and sometimes they did not; "that they could be made either way, where things are nicely and correctly adjusted; it required a good, experienced weaver to make the goods, especially the selvage." The two weft threads passed round the outer elastic cord in the lesser proportion of the goods made by him.

This, in view of the silence of the specifications upon this question, is an acknowledgment that the patented machinery could not be used without further invention.

On page 252, answer 227, the plaintiff says distinctly that in making Union goods he "used to raise the two outer cords of the fabric sooner than the interlocking warps, *and not raise* the shed so high." In other words, he raised the rubber selvage cords higher than the fibrous threads.

On pages 253, 254, he says there is no substantial difference (answer 233) between "single and double shuttle goods, or between goods made with a standing warp or a rising and falling warp." See also answer 231, as to the weft threads passing around the outer selvage cord.

In the light of this testimony, is there any evidence as to how the defendants made their goods?

There is no infringement proved.

Again, if the outer cords are moved to make the selvage in actual work, the plaintiff defeats the one great object his specifications say he obtains; viz., the freedom of the cords from wear, for he only frees a portion of them from wear. If a portion of them are subjected to wear, the evil is as great in that respect as before.

He says the goods are not substantially different from those made by other processes.

On page 12 of this brief, it was suggested that the requirement of the specifications, that all the rubber cords remain stationary, could not be complied with, where two shuttles were used as described in the specifications, and produce a fabric with any other than a frilled selvage. It was also shown that the plaintiff did not claim to make goods under his patent with such a selvage.

It will appear, upon an examination of the various specifications, that they forbid the making of such a selvage.

A frilled selvage is made by the interlocking of fibrous warp threads outside of the outer rubber cords. But the original patent and Division B expressly say the fibrous warp threads interlock "in the spaces between the cords, and there only," and complainant denies the filled selvage (p. 229, ans. 30).

Thus it appears that no fabric can be made if the specifications are fairly carried out, but that additions and invention are necessary to the use of plaintiff's invention.

In addition to the plaintiff's own testimony on pp. 353, 354, showing the worthlessness and inutility of the patented machinery, we have the following testimony that the goods are as well made by the rising and falling rubber warp as by the stationary warp.

John H. Buckley. 581.
Josiah Harriman. 726. 727. 728
John Eabrey. 576. ans. 11. 12. 13.
Ferdinand Doebley.
Rudolph Braeger. 659. 660. ans 13. 14. 15. 17.
Henry Gurney. 586 — 590. 683. 614.
C. McCoy Bagot. 591. 592. 611.
S. L. Johnson. 616. ans. 8.

If it is claimed that the notice to take testimony of some of the witnesses, or amendment to the answer, relates by its terms to Division B, the answer is that it was obviously a mistake which did not mislead the plaintiff, as the other divisions only are in suit, and it could have reference only to them. Also that the objection was not taken at the putting in of the testimony, and is therefore waived. Also that the testimony, for the most part, was competent irrespective of notice.

That the complainant is not entitled to costs, except as admitted by the appellant, needs no lengthy argument. At any rate the question as to costs is clearly presented by the master. It would certainly be inequitable to charge the appellant with one-sixth of the full costs, when the testimony in this case costs the complainant, in consequence of appellant's courtesy, only one hundred dollars.

BENJ. DEAN,

Counsel for the Defendant.

Supreme Court of the United States.

No. 44.

GLENDALE ELASTIC FABRICS COMPANY,
APPELLANT,

vs.

WILLIAM SMITH.

ADDITIONS TO APPELLANT'S BRIEF.

NOVELTY.

This properly belongs at the end of page 3 of Brief at the end of the "statement of the case."

Judge Shepley did not favor us with an opinion giving us the grounds of his decision for the complainants.

This patent has before been the subject of judicial investigation.

It is true that in those cases the decisions immediately involved Division B, relating to the fabric; but they were made upon the same record which is presented in this case, and involved an examination of the whole subject.

Judge Woodruff, in his opinion, in Smith *vs.* Elliot, 5 Fisher, 315, on the same record says:

"Thus, if a fabric be already known and in use, change of color, change of mere material, or in the fineness of the parts thereof, if these changes involve nothing new in construction nor in the relation of its parts, nor in the office or function of either part, the whole do not constitute inven-

tion, although for many purposes these may constitute the greater excellence of the fabric. Indeed, in the present case, not even such changes are claimed in the complainant's specification to have been made."

The case of Smith *vs.* Nichols was first heard before Justices Clifford and Lowell. The opinion was given by Lowell, J., (6 Fisher, 61.)

The learned judge uses this language:

"Taking this evidence and the plaintiff's disclaimers into consideration, he appears now to claim that his fabric differs from others known before, by being more tightly woven, so that it can be cut crosswise without danger of the cords slipping back or withdrawing, and by having the cords so near together that they form a great part of the bulk of the cloth. Now, it does not appear to us that these differences make up a patentable improvement. The fact that an article is better and more useful in the trade is evidence of novelty; but if the superiority is attained by the application of known means in a known way, to produce a known result, though a better one, the novelty required by the patent law is wanting."

The opinion goes on at length to show a want of novelty in the patent.

The opinion of Swayne J., in the same case in this Court contains this language:

"The counsel for the appellant admits expressly that an elastic fabric with silk on one side and cotton on the other, one woven with two shuttles, one woven with stationary elastic cords, and one with elastic cords covered above and below solely by weft threads, were known and in public use by themselves separately before the alleged invention of the complainant.

"It is also admitted that suspender webbing of different kinds, some provided with elastic cords having strips of cloth interwoven between them, and another class without the strips of cloth and similar to the complainant's, except that the weft threads *in pairs* were not made to grasp the elastic cords in the manner described in the complainant's

specification, also in like manner preceded his invention. The proof to the same effect, less the exception named, is voluminous and conclusive. It is unnecessary particularly to refer to it. The testimony is equally full as to webbing for shoe gores. That made in the same way as the suspender webbing also came into public use and was largely sold at an early period."

Again the same opinion says:

"The evidence before us leaves to the complainant none of the particulars claimed as his invention, except perhaps greater tightness of the webbing, a firmer grasping of the elastic cords by the weft threads, half round, above and below, and greater beauty and value of the fabric. The entire ground of the controversy between the parties is reduced to this narrow isthmus, and the question presented for our determination is one rather of law than fact."

There is no increased fineness of fabric due to the process described in the complainant's patent.

The complainant testifies in answer to cross-int. 233, p. 254:

"As I have before stated, there was no substantial difference, and if the interlocking warps and weft threads were made of strong silk that would bear a tension upon them, the weft threads would clip so tightly around and upon the elastic cords that the rubber thread would imbed itself but little if any in the weft; I do not think there would be any difference, or but little, between goods made with a double or single shuttle, or between goods made with a standing warp or a rising and falling warp."

Other testimony, referred to on p. 15 of the brief, shows no difference in the double shuttle and single shuttle fabrics. What then has the process accomplished?

Besides, the process described in the plaintiff's patent is not necessary in order to have the weft threads in pairs made to grasp the elastic cords.

The upper and under weft threads need not pass at the

same time to accomplish this. They may pass one after the other if they are beaten up together; and Doebly says such was the case.

Page 676, Int. 51. "Was there a beat of the lay after each throw of the shuttle?"

Ans. "Sometimes there was and sometimes there was not; that is to say, in some goods one shuttle would go through one shed, and then the lay would beat, and then the other and then the lay would beat. Sometimes they made goods with the shuttles (both) passing through the sheds before the lay would beat up."

This alludes to the use of a stationary warp, but it is obvious that these *pairs* of weft threads could be produced by the rubber rising and falling as well, by delaying the beating up of the lay until two weft threads had been passed across.

INFRINGEMENT.

The whole testimony upon this question is as follows—beginning in the latter part of answer 7, page 226, in testimony of complainant:

"We then proceeded down the room, and I saw several looms where they were making Union shoe goring, that is, silk on one side and cotton on the other, both shuttles passing through the web simultaneously together. I took particular notice of the manner in which the lay, or lathe, and shuttle board were constructed: I saw that they were made permanent, and a fixture; that they were not made to rise and fall, for one shuttle to pass through the shed at a time, but the plane of each shuttle was permanent, and made and constructed in exactly the same manner as my specification, and drawings and claim, in my patent, Division A. In looking at the stationary warp in the aforesaid loom, I saw that they had the stationary warp in the centre of the movable warp, whereas in the drawing of my patent it is shown to be behind the movable warp, but in practice I moved the stationary warp from behind to the centre, and also to the front of the movable warp, according to the character of the

goods I was making at different times. The remaining part of the loom I do not claim under my patents, being varied in the trade according to taste and opinion of different parties, and according to the character of the goods manufactured.

"8 Q. In the process of weaving, which you saw in the Glendale factory, how did the filling enclose the stationary warps?

"A. It was covered [the stationary warp] by the weft thread only.

"9 Q. State how the process of weaving, which you saw at the Glendale factory differed from that invented by you and secured to you by your letters patent, if at all?

"A. There was no difference in the process of weaving, but the way it was fitted up showed a great want of knowledge of art in making the goods, which, if all the goods were made similar to what I saw them making at that time, I could distinguish those goods in the market from any other make or manufacture that I ever saw. As far as the machinery went of the looms, the machinery itself was, I consider, good."

This testimony was taken before the disclaimer.

The testimony was taken November 29, 1869. The firs disclaimer was filed January 22, 1870.

This testimony fails to show infringement: 1st. There is no stationary heddle proved, but "the way it was fitted up showed a great want of knowledge," &c.

This ends Division C of the patent.

There is no evidence that there were not pieces of cloth woven between the rubber cords.

Therefore, there was no infringement of the Division A, as modified by the disclaimer, and in this testimony he, in general terms, says the loom was like his specification, drawings, and claim, in Division A.

He does not say anything was like Division C.

We submit that division A cannot be sustained.

Also that Division C cannot be sustained, and there is no infringement of that division testified to.

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goods I was making at different times. The remaining part of the loom I do not claim under my patents, being varied in the trade according to taste and opinion of different parties, and according to the character of the goods manufactured.

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"A. There was no difference in the process of weaving, but the way it was fitted up showed a great want of knowledge of art in making the goods, which, if all the goods were made similar to what I saw them making at that time, I could distinguish those goods in the market from any other make or manufacture that I ever saw. As far as the machinery went of the looms, the machinery itself was, I consider, good."

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He does not say anything was like Division C.

We submit that division A cannot be sustained.

Also that Division C cannot be sustained, and there is no infringement of that division testified to.

Besides, in this testimony the complainant distinctly says the stationary warp was placed differently from the drawing in his patent.

He also says that but a small part of the defendant's loom is within any of his patents. If, therefore, his claim to a stationary heddle, "in combination with mechanism substantially as set forth in performing the weaving," is construed to mean the whole loom as described; in that case, the defendants do not use either the stationary heddle nor the loom.

Costs.

The statute *distinctly provides that the complainant shall not recover costs, where* a disclaimer is filed, *unless the disclaimer is filed before the commencement of the suit.* Here the first disclaimer was filed after the action was commenced, and most of the costs accrued; and the second disclaimer was filed after all the testimony had been taken.

If the complainant had prevailed in the New York suits, he would have recovered full costs. It would have been no answer to the claim for full costs, that in the taking they purported also to be taken in the Massachusetts cases. The testimony belonged in the circuit court in New York. There was no way provided for transferring them to Massachusetts. The circuit court in Massachusetts had no authority over them. The complainant had elected to use it in New York, and was concluded by that election.

To relieve him of this dilemma, the defendant consented to the use of a certified copy.

Surely the defendant should not be held to pay any costs of such testimony.

The counsel for the defendants objected, see p. 43, IV, that the defendants should not be held to pay for the taking of depositions to be used solely in other cases; but p. 46, the Court overruled this objection because there was no motion

to strike out irrelevant matter, though stating there was much such put in by complainant.

But a trifle of the complainant's testimony has any relevance to this cause. Much of it has no relevancy to any cause.

Twelve witnesses were called to testify that suspender webbing is not suitable for shoe gores, viz., Baker, Brown, Burt, Dix, Doak, Dowling, Miles, Morrow, Newman, Perkins, Silver, and Underhill.

Twenty, that there was an organization to defend, namely, C. E. Armstrong, John Armstrong, Cary, Claflin, Daggett, Dean, Dodge, Dole, Hedges, Ferguson, Hills, La Foy, Nichols, Ordway, Shattuck, Simmons, Tower, Thompson, Warren, Wise.

To both the above questions eight, namely, Bubier, Cragin, Davis, Dix, Gorman, Snell, McCallum, Mulford. To the inferiority of a certain article sold as No. 48, six, namely, Fosdick, Hammond, Holt, Lewis, Lincoln, and C. C. Nichols.

INVALIDITY OF THE REISSUES.

The original patent is found on page 749, except that the words in brackets at the bottom of page 750 should be stricken out as stated at bottom of page 839.

BENJ. DEAN,
Counsel for Complainant.

The Supreme Court of the United States.

No. 264.

THE GLENDALE ELASTIC FABRIC CO., *Appellant*,
vs.
WILLIAM SMITH, *Appellee*.
} In Equity.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

R. P. LOWE, *Attorney for Appellee.*

The appellee was the first inventor of a new process for manufacturing corded and elastic fabrics, as well as a new description of machinery for weaving the same, and for which he held letters patent from the United States granting to him the exclusive right to make, use, and vend said improvement, which was of great benefit to the public and great value to him as inventor. In violation of this right, the appellant wilfully, and without permission, infringed the same to the very great detriment of the appellee; whereupon, in November, 1868, the bill found upon page one of the Transcript was filed to restrain the defendant named therein from a further infringement of said invention.

In the answer, and the three amendments thereto, the appellant denies the charging part of the bill; and also denies that the appellee was the first inventor of said improvement, and alleges that the same, and every part thereof, long

before the date of appellee's invention, were described and contained in some forty or more letters patent granted to various inventors by the Governments of Great Britain and the United States, thereby creating as many distinct issues, which necessarily tended greatly to increase the costs in preparing for the trial thereof. At the hearing of said cause the court held that the appellee was the original and first inventor of the improvements described, and that the appellant had infringed his patent, including his exclusive rights thereunder, and thereupon ordered the injunction to be made perpetual, and that the appellee should recover the profits which had accrued to the appellants in the manufacture and sale of the improvements specified.

This decree is singularly remarkable in two particulars: 1st. It finds the appellant guilty of infringing both patents, but only awards compensatory damages for a violation of one of the inventions, namely, that of the new process of manufacturing corded and elastic fabrics, and nothing for the use of the new machinery for weaving the same. They were entirely separate and distinct inventions, and the appellee was entitled to relief as well for one as the other. 2d. In fixing as the measure of compensation the profits which had accrued to the appellant in the manufacture and sale of the improvements specified. This rule of damages overlooks the fact that the inventor would be injured just as much by supplying the demand for such goods without realizing any profits on account of negligence and want of skill as if the manufacture thereof equaled the demand with large profits, because of the requisite skill, prudence, and business capacity of the manufacturers. If the decree of the court had authorized the appellee to recover the profits on the amount which an experienced and skillful manufacturer like the appellee himself would have made in the manufacture not only of the newly-invented fabrics, but also in the use and value of the new machinery for weaving the same, it would have been more reasonable, and tended much better to advance the ends of justice, and under which the appellee

in this case would have undoubtedly recovered handsome damages. To carry out, however, the decree of the court under the rule of damages established thereunder, the question of profits was referred to the clerk thereof, as master, to ascertain and report an account of the same. In the execution of this duty, the clerk was shut up to the necessity of depending almost entirely on the books of the appellant, which placed the rights of the appellee completely at the mercy and in the power of the appellants. Not only so, but the inquiry occupied some nine or ten months, which gave the appellants the most ample opportunity to adjust their books so as to make the desired showing. Of course, the books made no showing of profits, in the opinion of the master, which cannot be read carefully without a feeling of unfairness shown towards one party and that of manifest partiality for the other. Yet, notwithstanding the appellee recovered no damages under the strange rule which the court, as the measure thereof, had established, still, inasmuch as the appellant's was held to have violated appellee's patent, he was entitled to recover the costs of suit, which were very large, chiefly for two reasons: 1st. Because of the forty distinct issues in the appellant's answer; and, 2d, because of the peculiar nature of the decree which made the damages to be recovered to depend upon the profits realized by the appellants, and this required a range of inquiry, and a space of time to make it, that fearfully augmented the costs. Now, as the question in this case is simply one of costs, I have made the foregoing statement, which the record will support, to show the very great injustice which has been done the appellee in the matter of awarding costs, which will now be referred to.

On page 45 of the record will be found an itemized statement of appellee's costs, amounting to $5,426.51. Immediately under this is a retaxation of these costs by the clerk, in which he reduced said amount to $2,023.55; and this, on submission to the court, was approved, (p. 46.) Counsel for the defendant below then moved the court to amend or

modify said decree by striking therefrom so much thereof as relates to the costs. This motion was heard and overruled by the court. No question was reserved or exceptions taken to said ruling. Nevertheless the defendant below appealed to this court, where the case has been pending some three years. But as there was no question reserved for this court, and no movement by the appellant has been made herein up to this date, it is quite patent that the appeal was for delay and to vex and harass the appellee.

In this condition of the record the appellant can have no stand in this court, and it follows that the judgment below must be affirmed. But is that all this court can do for the appellee under the extraordinary circumstances which have marked the history of this case? It is true the appellee has not appealed, nevertheless, the case is here on an appeal. It is a chancery proceeding, and for that reason is triable on its merits. In this class of cases it is competent as well as usual, I believe, for a court of the last resort to render such a decree as the court below should have given. Such an exercise of power has its foundation in the policy, the wisdom and the justice of the law, whoever may take the appeal.

The appellee in this case does not ask the court to go beyond the question of costs, the judgment for which should be changed and enlarged, and made to cover the whole costs instead of a mere fractional part thereof, as ruled below, and that, too, for the following reasons:

1st. The large accumulation of costs in this case was the necessary result of two things; first, the multiplicity of issues raised, by the pleas of the defense, which proved to be myths, and, second, the singular character of the rule of damages laid down by the court as above specified, the effect of which was really this, namely, that, although the defendant has infringed the plaintiff's patent, it is ordered and decreed that the Glendale Elastic Fabric Company, shall pay such compensation therefor as may suit its good pleasure. If the decree had been in these words, instead of

other words with this effect it would have saved nine months' investigation by the master and thousands of dollars of costs.

2d. On page 45 of the record will be found a schedule of plaintiff's costs, as the clerk had made the same out, amounting to $5,426.51. (This sum, as I am informed, is less than half the costs which the seven years' contest with defendant has subjected the plaintiff to.) On an application to retax these costs, it will be observed on page 43 the clerk says that the above amount is not in excess of the sum showed by the vouchers and proofs before him, to be considered as proper for taxing the costs in this case; that the several items correctly represent in amount the matters which they purport to represent. Nevertheless he reduces this amount to $2,023.55, and, on page 44, he gives his reasons for so doing, which is wholly unsatisfactory and manifestly unjust. It seems that the plaintiff, besides the defendant in this cause, had sued three other defendants—Farnum, in the Northern District of Illinois; Whithorne and others, in Southern District of New York, and Nathan Nichols and the Glendale Elastic Fabric Co., in the District of Massachusetts. The depositions of quite a number of witnesses under the title of these four causes, were taken and perhaps were intended to be used or read in evidence in each of them, but there is nothing in the record to show that they were, except the word of the clerk, who, in retaxing the costs, allowed the plaintiff in this case, one-sixth of the same. Now, if he has the power to divide up the costs in these four cases and determine what costs shall be taxed and recovered in the courts of New York and Illinois (which is denied), why did he not allow us our equal proportion, one-fourth instead of one-sixth?

But the most extraordinary feature of the retaxation of these costs is this: The clerk, on page 44, of the record, states that but one single deposition was taken in this cause unconnected with other cases, whereas the record itself reveals a very different state of facts. If the court will take the trouble to look through the record, it will find not less

than 280 printed pages occupied with depositions taken in this case alone, embracing over 100 witnesses. Yet the clerk had the grace and magnanimity to allow the plaintiff one-sixth of the cost of taking and one-sixth of the cost of printing these depositions. Again, the defendant called upon the plaintiff to produce a copy of certain testimony taken in another case, which he did at a cost of $200 to himself, yet the clerk only allowed him the half of this expense, caused alone by the defendant; and so with other items of costs equally unjust in their reduction, which I will not stop to enumerate. Enough has been shown to illustrate the great wrong and injustice which has been done the plaintiff in the matter of retaxing the costs. He was an honest English manufacturer, and worked out by his inventive genius a great improvement, which will bless and benefit the world for all time to come. To the exclusive right of these improvements he was entitled by letters patent from this Government. The costs of ten years' litigation in seeking redress have made him a pauper and sent him to some institution established for the indigent, aged, and infirm, where he now is, utterly broken down. The defendant, not satisfied in being let off from paying any damages for violating his patent rights under the law, is now striving to throw all the costs of the litigation on to him, which they have well nigh accomplished through a pliant clerk. Will not this court stay the hand of these oppressors, and declare that the appellee shall, at least, recover the costs which the clerk first taxed up against the defendant, namely, $5,426.51? If this cannot be done in justice to the appellee, let it be done to protect the honor and integrity of the Federal courts, lest they become the instruments of oppression and a bye-word before the country; for I say again that it is simply impossible, with a right understanding of the facts of the case, not to feel that there has been an utter failure in the administration of justice.

R. P. LOWE,
For Appellee.